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DIPLOMATIC CRIMES LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

AUGUST 5, 1987

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DIPLOMATIC CRIMES LEGISLATION

WEDNESDAY, AUGUST 5, 1987

U.S. Senate
Committee on Foreign Relations
Washington, DC.

The committee met at 10:07 a.m. in room SD-419, Dirksen Senate Office Building, Hon. Claiborne Pell [chairman of the committee] presiding.

Present: Senators Pell, Moynihan, Helms, and McConnell.

The Chairman. The Committee on Foreign Relations will come to order.

In recent years, a number of violent assaults by foreign diplomats who have escaped arrest, prosecution, and jail time under the protection of diplomatic immunity have justifiably outraged the American public and caused Congress to focus again on the concept of diplomatic immunity.

In this Congress, a number of bills have been introduced which would alter in some way the privileges and immunities currently enjoyed by foreign diplomatic personnel. Senator Helms, the ranking member of the committee, has introduced S. 1437, a bill to deny criminal immunity to certain members of the diplomatic corps for crimes of violence, drug trafficking, or reckless and drunk driving.

Senator Specter, who will appear as a witness this morning, has introduced S. 339, a bill to amend the Federal Criminal Code to make the use of firearms to commit a felony by foreign diplomats to the United States a Federal felony.

We look forward to a discussion of this legislation and the general topic of diplomatic crimes this morning. Integral to that discussion must be its consequences on the United States large diplomatic presence around the world and our strong interest in preserving appropriate protections for our own citizens posted abroad.

The removal of criminal immunity abroad would surely expose U.S. diplomatic personnel and their families to harassment suits, as well as trumped up criminal charges by persons in nations hostile to U.S. interests. Under such circumstances, American diplomats might not simply be detained briefly or expelled, but could become long term hostages, subject to criminal prosecutions, show trials, and eventually imprisonment.

The United States, with its high respect for the rule of law, would be unable to reciprocate with such harassment for such offending states.

I welcome all our witnesses here this morning as we examine the problem of abuse of diplomatic immunity. I would ask the ranking member if he has a statement.

Senator HELMS. Mr. Chairman, I thank you very much for your statement and for scheduling the hearing on my legislation. As I stated when S. 1437 was introduced by me, this legislation is overdue and made more necessary by every passing day.

During the past month, for example, since the legislation was introduced, there have been at least three more serious incidents involving diplomatic immunity, further demontrating the need for corrective legislation.

It is time to put an end to the existing legal loophole that has allowed the family and support staff of foreign diplomats to commit crimes in the United States that would warrant serious punishment if committed by citizens of the United States.

The escalation in the number of so-called diplomatic personnel in our country to the present level of 37,000 has, of course, exacerbated this problem. In practice, these 37,000 foreigners are free under current law to commit any crime, no matter how serious, how violent, or how heinous, and remain free from prosecution.

This situation in the judgment of this Senator must be stopped immediately. The committee needs to hear from the innocent American victims of diplomatic crime. We need to hear from law enforcement officers whose efforts are often frustrated by criminals who avoid prosecution and punishment by claiming diplomatic immunity.

And we need to hear from legal scholars and authors who have devoted countless hours in researching and familiarizing themselves with this escalating problem in our legal system.

Now, the legislation I am sponsoring would remove diplomatic immunity from family and support staff of foreign diplomats when the family or the staff traffic in drugs or drive while intoxicated or commit other reckless driving offenses or commit violent crimes against U.S. citizens.

Mr. Chairman, there may be another way to tackle this problem other than the way that I have proposed, and I am certainly willing to discuss alternatives. But the situation must be corrected. It must be corrected by this Congress, and at a minimum S. 1437 provides a starting point.

Mr. Chairman, I ask unanimous consent to include in the hearing record the written testimony of a witness who could not appear at this hearing for fear of reprisal. This testimony deals with the rape of a 16 year old girl named Holly.

Holly was raped by a Saudi Arabian and an Egyptian who were guests in our country, both of whom taunted her with the fact that they enjoyed diplomatic immunity during the brutal assault on this young woman.

The CHAIRMAN. Without objection, that will be included.

[The material referred to appears in the appendix.]

Senator HELMS. Thank you, Mr. Chairman. That concludes my statement.

The CHAIRMAN. Thank you very much.

Is Senator Specter here? If he has not come, I think we will move ahead, because there are a lot of witnesses to hear, who I must ask when their turns come to be as brief as possible.

I would ask Mrs. Roosevelt, the Chief of Protocol, if she would come forward, speaking for the administration. We welcome you, Ambassador Roosevelt, and look forward to your testimony.

STATEMENT OF HON. SELWA ROOSEVELT, CHIEF OF PROTOCOL OF THE UNITED STATES, DEPARTMENT OF STATE; ACCOMPANIED BY MICHAEL G. KOZAK, PRINCIPAL DEPUTY LEGAL ADVISER, DEPARTMENT OF STATE

Ms. ROOSEVELT. Thank you, Senator.

The CHAIRMAN. If you could identify your colleague.

Ms. ROOSEVELT. Sir?

The CHAIRMAN. If you could identify your colleague.

Ms. ROOSEVELT. I will.

Senator HELMS. Mr. Chairman, while they are getting settled, Mrs. Roosevelt, I would ask a personal favor of you. I know your time is limited, but some of the witnesses who will be heard by this committee after your testimony will present information that I think you ought to hear. And if I may, I would like for you to stay around a little while and listen to some of the testimony.

Ms. ROOSEVELT. I plan to, Senator, as long as I can.

Senator HELMS. You are very kind. Thank you very much.

Ms. ROOSEVELT. I am Selwa Roosevelt, Chief of Protocol——

The CHAIRMAN. Could you pull the mike a little closer.

Ms. ROOSEVELT. Now is it better?

The CHAIRMAN. Closer still.

Ms. ROOSEVELT. All right, fine.

My office is responsible for the accreditation of foreign government personnel to the United States. I appear here pursuant to Senator Pell's invitation to submit the Department of State's views on S. 1437 as introduced by Senator Helms.

With me is Michael Kozak, Principal Deputy Legal Adviser of the Department.

Mr. Chairman, I have an abbreviated written statement for the committee, but with your permission I would like to read it.

The CHAIRMAN. Without objection, your full statement will be inserted in the record as well.

Ms. ROOSEVELT. At the outset, I would like to point out that I have lived overseas as the wife of an Embassy officer and I have been a journalist in this city for many, many years. And although I appear today here as Chief of Protocol, I do have a broader perspective on this subject, having observed the application of diplomatic immunity from a number of different points of view.

Diplomatic immunity is fundamental to the conduct of foreign relations, and the reason is basic. It is to assure that diplomatic representatives may carry out the business of their governments without undue influence or interference of the host country, and may work in an environment of freedom, independence, and security. It was never designed to benefit individuals or to protect them from criminal prosecution, but to ensure the efficient performance of the functions of the mission.

Immunity, as I am sure you know, Senators, has its roots in antiquity. In our country, statutes extending immunity to diplomats were enacted as far back as 1790, and in 1978 the Diplomatic Relations Act repealed the 1790 statutes and established the Vienna Convention on Diplomatic Relations as the law on the subject.

The law governing consular immunity is the Vienna Convention on Consular Relations. I have attached to my statement a chart which shows the degree of immunity accorded diplomatic and consular personnel.

Let me say right at the outset that I am not here to defend the indefensible. I certainly do not approve of unlawful acts of persons having immunity and I am not going to defend that.

And I might add, the serious abuses of these immunities, although they are rare, do concern me deeply, and during my 5 years as Chief of Protocol I have tried to institute a more effective response to diplomatic crime. I have established a reputation in the community, I am happy to say, for toughness, and I cannot overemphasize how strongly I feel about this issue.

At the same time, I would like to bring some rational thinking to this subject. We must weigh the extreme remedial measures against the great injury that those measures could cause to U.S. interests.

With all due respect, sir, my colleagues and I cannot support this proposal, for one elemental reason: It would be detrimental to the interests of the United States abroad. Regardless of how grievous these matters may be, our national interest has to take precedence over any other consideration.

You know, in this world full of discord and disagreement, where nations rarely agree on anything, the principle of immunity is something to which the community of nations has agreed.

Then there is another consideration. We are an honorable nation. We are not an Iran. And we have set our signature to a treaty. Enactment of this bill would place us in violation of our international obligations. We do not believe that our government, to which so many others look for guidance, should abrogate its responsibilities under international law.

If we unilaterally alter our treaty obligations, we invite harmful reciprocal actions. Now let us consider what could happen if similar legislation were passed in other countries.

The bill would eliminate immunity for crimes of violence,, defined as "the use, attempted use or threatened use of physical force against the person or property of another." This is a large category of crimes. Other countries might respond by eliminating immunity even more broadly.

And even if another country eliminated immunity on precisely the same crimes we do, Americans would still face unequal treatment. I need not remind you that other peoples' code of justice is hardly like ours. And those serving in countries with similar legislation could be arrested, detained, and questioned until the matter was fully adjudicated, instead of having the benefit of our bail procedures and so on.

Once the floodgates are open, other governments may not mirror this bill in the response they make. They could go beyond the measures proposed, and think of how hostile governments could use the arrest and detention of an American official, however minor, as political blackmail.

Now, it is true the language of the proposed legislation covers only members of the administrative and technical staff and the service staff of diplomatic missions and consular employees. Persons not affected under this would be diplomatic agents, members of their families, and family members of the administrative and technical staffs.

Based on a review of our files for a recent 12-month period and a review of the Ashman-Trescott book, we find that only two incidents would have been addressed by this legislation.

We ask whether its passage, undermining longstanding international convention, would really serve our best interests, especially when you consider that so many Americans and their dependents are overseas, many more, I might add, than are here?

Many of the members of our own administrative and technical staffs, including communicators who transmit encoded messages and secretaries who type the mission's classified documents, engage in very sensitive work. We cannot take great comfort in the full immunity of an Ambassador if those who do his clerical work or transmit classified material could be interrogated and jailed by hostile foreign authorities.

If the intent is to reduce the immunity of family members of diplomats and family members of the administrative and technical staff, as we have been led to believe informally, we obviously cannot support that proposal, either.

Under the diplomatic convention, members of the family of a diplomat have full criminal immunity, as do members of the administrative and technical staff of the mission and their families. Lower level members of Embassy staffs have criminal immunity only for their official acts.

In addition, under the consular convention consular personnel have criminal immunity for acts performed in the exercise of consular functions. These immunities do serve important objectives and all would be curtailed.

Now, diplomats could not perform their duties if they or the members of their families could be harassed by the receiving state bringing false charges under local law. Can you imagine an American Ambassador's spouse, for example, involved in an automobile accident being taken away by the police in certain countries—I will not name them—to be held in jail according to local statute or, worse, being held on trumped-up charges? Think of the implications.

Of course, we cannot respond in that way because our system does not operate that way.

We have people from a variety of agencies serving overseas in countries where the risks outlined are very real. If the United States were to reduce the immunities of diplomatic personnel here, I am certain that foreign states would reciprocate by restricting the immunities accorded the United States.

If children of members of our administrative and technical staffs could be detained and imprisoned, our personnel in hostile foreign countries would not be able to do their jobs effectively or they might have to leave their families behind.

The proposed legislation also would affect consular personnel, and their immunity applies now only to their official acts, but family members—excuse me. I am just going to skip this because of time. It is more technical and I do not mean to go into it, but the same sort of problem would result.

Even with respect to the more limited immunity accorded consular personnel, the bill would still place the United States in violation of the Vienna convention and put U.S. personnel at risk of reciprocal measures.

For example, a hostile country might charge a U.S. consular officer with assault if he took measures to defend himself against physical attack by a disgruntled visa applicant. That is just one example. The United States should be entitled to assert consular immunity to prevent the case from going forward. This measure, if enacted, could provoke reciprocal legislation which would bar such assertion of immunity.

At this point, Mr. Chairman, I should also point out that on a reciprocal basis the United States has entered into agreements with certain countries extending broader immunities for their consular personnel. Our consular personnel in the Soviet Union and the People's Republic of China have full criminal immunity and we are obligated to provide the same immunities to their consular employees.

The proposed legislation therefore would violate our bilateral agreements, in addition to violating the Vienna convention.

Incidentally, it may be of interest to you that the British Foreign Office instituted a full review of the Vienna convention in the aftermath of the fatal shooting of a policewoman by a gunman in the Libyan Embassy. The British concluded that it would be wrong to amend the convention as the solution to the abuse of diplomatic immunity, but instead implemented a firmer policy in its application.

So while the Department of State cannot support the proposed legislation, we have taken a variety of steps to curtail abuses of diplomatic immunity that are wholly consistent with the law, and I would just like to mention these.

Barring reentry is one. Some years ago, I initiated a system to bar the reentry of serious offenders entitled to immunity at the time of their expulsion. The names of the offenders are now entered into the Department's worldwide automated visa lockout system so that, should an offender seek another visa, the application is held up until the Department's advice can be obtained.

The names also are given to the central office of the Immigration Service, to alert ports of entry that arrivals of such persons are to be reported immediately to the Department.

I may interject here, Senator, that many of the people who commit these crimes are juveniles. I have ordered them out, separated from their families, and naturally they will try to return if they can because they want to be with their families. And the families want to get them back too. Now I prefer sending the entire family out, if the situation merits it.

Anyway, we have found that the system was not perfect and in at least three cases the persons expelled reentered the United States. To prevent any further such occurrence, we are now ensuring that the diplomatic visa is cancelled before an alleged offender leaves the country. And should he not do this, we will inform the mission concerned that the principal alien cannot be replaced until the visa has been canceled. This is just further trying to tighten up.

You know that in the case of juvenile crime, which a lot of it is, expulsion probably ends up as better protection for the community than having them stay here and waive immunity and stand trial, because you know how lenient our courts are with juvenile offenders.

The culprit would probably end up with a rap on the knuckles. At least they are out of our country and not able to do any more damage.

And the second thing that we have tried to institute is police guidance. In March, the Department published a written guidance for handling incidents involving foreign diplomatic and consular personnel. It has been distributed nationwide.

I am happy to make this booklet available to the committee, and I have some with me. As you will see, we have pointed out the necessity for careful and complete police work at the time of the incident in order to lay the basis for possible future prosecution when immunity ceases to exist.

We urge that charges be pursued as far as possible. After the offender leaves the United States, the existence of a standing arrest warrant may be entered into the records of the immigration authorities. The existence of the warrant and the knowledge that the Federal Government will assist in serving the warrant will deter an offender from attempting to return to the United States.

In the recently publicized Afghan auto case, which I think has been currently in the papers, we learned that the New York law enforcement authorities discontinued the investigation on the assumption that the driver was immune. You might be interested to know that neither the U.S. mission to the U.N. nor the Office of Protocol was consulted in making this determination.

However, as soon as our U.N. mission learned of the incident it asked the police to reopen the investigation. We did this because we firmly believe that in all of these cases the facts must be brought to light.

Another area I am trying to bring pressure on is parental responsibility. In particularly egregious cases involving juvenile offenders, I have had the entire family expelled from the United States. This policy ensures that the parents will be fully accountable for the acts of their children.

And on traffic offenses, which I know is a serious problem, we have an eight-point program. In September 1984, the Department's Office of Foreign Missions instituted a program to monitor traffic violations and increase the observance of traffic laws.

The Department assesses points for all traffic violations using the American Association of Motor Vehicles Administrators' standardized point system. The accumulation of eight points during a 2-year period may result in the loss of the privilege to drive in this country.

For example, persons driving while intoxicated are assessed the full eight points. We do not permit a member of the diplomatic community who has operated a motor vehicle under the influence of alcohol to operate a vehicle in the United States again.

Up to this time, 15 drivers' licenses have been permanently suspended.

Identification documents. Recently, the Office of Protocol began issuing newly designed identification documents. The cards state the type of immunity which the bearer has and provide phone numbers to call 24 hours a day for guidance.

In cases where immunity is limited, the cards state that the bearer is not immune from arrest. Therefore, they cannot pull a fast one on the police.

Definition of "members of the family." The Vienna convention accords immunities to family members forming part of the household, but does not define family members. In May 1986, we fixed age limits beyond which the Department no longer would extend privileges and immunities to dependent children.

The cutoff age is 21 unless the child is a full-time student, in which case the age is 23. This has reduced the number of persons entitled to privileges and immunities.

We are continually reviewing means to reduce the numbers of persons entitled to immunity. For example, we are not obligated by the Vienna convention to extend full immunity to aliens "permanently resident in the United States." Accordingly, we propose to terminate privileges and immunities for locally hired members of Embassy staffs who have resided in the United States for 10 years or more.

And in closing, I would like to express my appreciation to the committee for this opportunity to present the Department's views on this sensitive matter. Also, I want to assure you that we stand ready to take action in any situation where a person with immunity acts contrary to the law.

My colleague and I will now be pleased to respond to any questions the committee may have.

[The prepared statement of Ms. Roosevelt may be found in the appendix.

The CHAIRMAN. Thank you very much, Ms. Roosevelt.

I see Senator Specter has joined us. We have a considerable time pressure here. Would you care to make your statement now and then we will defer questioning of Ms. Roosevelt.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM PENNSYLVANIA

Senator SPECTER. If it is acceptable, Mr. Chairman, I would be very pleased to make a brief statement at this time.

The CHAIRMAN. Fine, and your full statement will be inserted in the record as if read.

Senator SPECTER. Fine. I ask unanimous consent that that be done.

I appreciate the opportunity to appear before this very distinguished committee this morning. I regret that I could not be here earlier, but we had several hundred people from the Mon Valley, unemployed steelworkers, in another room in the Senate, and if it pleases the committee that took precedence. So I appreciate the opportunity to testify now.

Mr. Chairman and ranking member, I believe, as does Senator Helms from the legislation which he has introduced, that it is very important to revise the law on diplomatic immunity. And this is a subject which has been on my mind going back to 1984, when the British policewoman was murdered by the Libyan diplomat.

At that time, in the 98th Congress, I introduced Senate Bill 2730 and Senate Resolution 395, which would call for revisions in diplomatic immunity and the Vienna convention to provide that any diplomat who used a firearm in the commission of a felony or was engaged in acts of terrorism would be subject to prosecution in U.S. courts.

Those measures were reintroduced in the 99th Congress in Senate Bill 1388 and Senate Resolution 191, and have again been rereintroduced in the One 100th Congress as Senate Bill 339 and Senate Resolution 74.

It is my view that action is long overdue to tighten the law on diplomatic immunity, simply stated to exclude acts which are not in pursuance of diplomacy. Diplomatic immunity is obviously very important and has a vital historical purpose and vital purposes in the present day.

But when there are acts involved which are outside the scope of diplomatic immunity, it is my sense that they ought to be subject to criminal prosecution. This is a view which I have held going back for more than 20 years, when I was district attorney for the city and county of Philadelphia. It is a view which has been reinforced as I have seen what has happened in the international sphere, especially with respect to acts of terrorism.

Mr. Chairman and members of the committee, my prepared statement details the acts of terrorism which have concerned me, where they have been perpetrated allegedly by diplomats under situations where the diplomats ought not to be within the scope of immunity and ought to be prosecuted.

The incident that I had referred to earlier, on April 15, 1984, involved a British policewoman who was shot and killed by a gunman firing from the Libyan People's Bureau in London.

In 1985 on March 29, the Syrian diplomatic mission was clearly implicated in the bombing of the German-Arab Friendship Union in West Berlin, in which 11 persons were injured.

Then there was the aborted attempt to place a bomb aboard the El Al plane leaving London for Tel Aviv with nearly 400 passengers in April 1985, and on that occasion the Syrian Ambassador was implicated in the conspiracy to commit murder in that situation.

Then there was the bombing of the Berlin discotheque which killed an American soldier on April 5, 1985.

Last April 1986, it was reported that Italy had made arrests in connection with a plot involving at least two Libyan diplomats to kill the U.S. Ambassador to Italy and the Saudi Arabian and Egyptian Ambassadors.

So we have not only the chronology of crimes which has been enumerated in the floor statement made by Senator Helms when he introduced his legislation—rapes and automobile manslaughter cases and many other criminal offenses which are well beyond the realistic ambit of what a diplomat is designed to be able to do and what diplomatic immunity is designed to cover—and then you have, at a somewhat different level, concerted acts by international criminals and international terrorists taking refuge in diplomatic immunity, which is just outlandish, absolutely preposterous.

War is being waged today through acts of terrorism. We have the events in the Persian Gulf. We have the Iranian leadership making threats, where we do not know where next to turn on problems of potential terrorist activities in the United States—matters which are of great concern to law enforcement officials in this country.

Just one more word on this subject. In 1984 on July 24 and September 21, the Judiciary Committee Subcommitee on Security and Terrorism held hearings on the legislation which I proposed, which is is similar in direction and ultimate purpose to the legislation which Senator Helms has proposed.

At that time, we had testimony by former Supreme Court Justice Arthur Goldberg, who of course also was Ambassador to the United Nations, and Justice Goldberg endorsed the legislation which I had introduced, saying that the Vienna convention ought not to preclude action to stop international terrorists.

The testimony given by Daniel W. McGovern, Principal Deputy Legal Adviser of the Department of State, also suggested that it would be legal to enact legislation which I had proposed, and he said: "It would override our current obligations under the Vienna convention as the latter expression of the legislative will."

Of course, the issue was whether the United States was bound by the Vienna convention at all, and I am not going to get into that at this stage.

But I do believe, Mr. Chairman and Senator Helms, Senator McConnell, that the time is long overdue to take a close look at diplomatic immunity in many respects, to preserve it for genuine diplomatic functions where it accomplishes that purpose, but to stop criminal acts of international terrorism either on the streets of the United States or wherever they may exist, including the recent legislation which gives the United States extraterritorial jurisdiction.

It is now a violation of the laws of the United States, as a result of legislation signed last August 27, for a terrorist to maim, murder, or injure an American citizen anywhere in the world. And many of those acts are perpetrated under the name of diplomacy and it ought to be brought to a halt.

Thank you very much.

[The prepared statement of Senator Specter may be found in the appendix.]

The CHAIRMAN. Thank you very much indeed, Senator Specter. I have no questions. Senator Helms?

Senator HELMS. I have no questions, but I want to compliment the Senator from Pennsylvania. He has long been interested in this subject, as have I, and I commend him on his bill and I commend him for his past efforts in this direction.

Senator MCCONNELL. If I may, Mr. Chairman, just one thought or I guess question. If this measure were to pass, Senator Specter, do you expect some sort of reciprocity on the part of other countries in terms of Americans abroad?

Senator SPECTER. Well, Senator McConnell, I think there is a danger of retaliation that has been expressed by State Department witnesses, that U.S. diplomats would be subjected to retaliation and perhaps to trumped-up charges. But I think that is realistically unlikely.

I think that if you have relatives of U.S. diplomats committing crimes in foreign countries, that we would not expect diplomatic immunity to shield the son of an American diplomat for a rape charge or for an automobile manslaughter charge.

And when it comes to charges which we might levy against a foreign diplomat for assault or for acts of terrorism, I think it unlikely—I know that our diplomats are not going to undertake that conduct, and I think that it is unlikely that that kind of retaliation will be forthcoming, although it is a possibility.

To the extent that it is a possibility, regretfully, I must conclude that we just have to take our chances there; that what we are suffering from, acts of international terrorism, is so severe that we simply have to act on them. There are many, many situations. I know you have been involved in similar matters, Senator McConnell.

I can recall as a prosecuting attorney that witnesses did not want to testify for fear of retaliation, and sometimes they had to be subpoenaed and compelled to testify. Even though retaliation is possible, you simply can't turn your other cheek to perpetrators of violence. You have to bring them to justice.

And if there are risks involved, we simply have to undertake and assume them.

Senator McCONNELL. I am inclined to agree with you. I gather that the State Department does not. I was not here during your testimony. What is your reaction to that concern?

Ms. ROOSEVELT. Well, I think my concern is very real, sir, that so many of our Embassies have their people from other agencies and so on, FBI, other very sensitive areas of our Government. And I believe that our system of justice is a very fine one, but there are very few countries in the world that have a similar system of justice, and they could use any trumped-up charge to harass, blackmail us politically, could do anything they chose if it suited their purpose at some political moment.

I just think that we are the country that will run the biggest risk in the end. And also, I just would like to comment that I did not come here to discuss the question of terrorism, because that is another whole subject. We were talking about crime committed by members of the diplomatic community.

To my knowledge, and within the period that we are now talking here in the United States, there have not been those kinds of crimes. I am not saying it has not happened in other countries. But I mentioned what the British had said when they tried to review after that terrible incident that you referred to.

I also referred to it in my testimony. They did a thorough review of their relationship with the Vienna convention, and they decided that they would tighten it, but they could not abrogate their obligations unilaterally. In other words, this is something that every country has to stop and consider.

And I suppose the only way would be a concerted decision.

Senator McCONNELL. Thank you.

The CHAIRMAN. Thank you very much indeed.

Thank you, Senator Specter, for being with us.

Senator **Specter**. Thank you very much, Mr. Chairman, for accommodating my schedule. And I thank you for yielding.

The **Chairman**. We will consider your legislation along with Senator Helms' and any other thoughts that come out of this hearing.

Mrs. Roosevelt, I have several questions that I would like to work through. Basically, I find myself in concurrence with your views. I guess as a former professional diplomat myself, I am particularly sensitive to what you say.

I can remember being accused of espionage in a country where I was stationed, in Czechoslovakia, and being harassed. I can remember when we had a local employee be terribly beaten up and abused by local authorities, and I wanted to give him sanctuary.

And being in the consulate, which I was, as you know, only consular archives have immunity under the Geneva convention. We put a sign on the door marked "consular archives,' and it kept the police out.

And I think when you look at these things on one side of the curtain, it looks very different from when you are on the other side of the curtain. And so, because of my own background and continuing contact with diplomats behind the curtain and in hostile environments, I think it is very important that we preserve as many immunities as possible for them.

Now, I will give you these questions, and if you want to answer any of them for the record please do. I do not mean to get into a long session here, and I do not want to abuse the time of my colleagues.

But how many individuals within the United States are accorded some form of diplomatic immunity at this time?

Ms. **Roosevelt**. I just checked. We have 56,882 with some form of immunity; 27,283 of them have full criminal immunity.

The **Chairman**. Approximately 27,000?

Ms. **Roosevelt**. 27,283 to be exact.

The **Chairman**. And how does that break down between those in Washington and New York? Many of the problems arise with the United Nations personnel.

Ms. **Roosevelt**. I have all that. I just have to find the page it is on.

The total with criminal immunity in the United States is 27,283. Now, you asked how many family members?

The **Chairman**. How many of those family members are based out of New York and how many in Washington?

Ms. **Roosevelt**. 3,739 are based in New York; 6,634 are in Washington.

The **Chairman**. Not only family members, but in total?

Ms. **Roosevelt**. In total, well, there are 1,607 permanent mission representatives, and family members, 3,739; totalling 5,346.

The **Chairman**. Only 1,000 in New York?

Ms. **Roosevelt**. 1,607.

The **Chairman**. I would have thought it would be much more with 150 countries.

Ms. **Roosevelt**. Those are the accreditation figures we have. We have a lot more here in Washington, of course.

Senator HELMS. Mr. Chairman, I think she ought to check her figures. I agree with you, it is substantially more than that.

Ms. ROOSEVELT. These were prepared by my office, and we are the office of record. I am sorry, but the total is 27,283.

The CHAIRMAN. But you say you have only got 1,600 in New York. Do check those figures. I do not think they hold up.

Senator HELMS. I do not either.

Ms. ROOSEVELT. Excuse me. These are the total with criminal immunity. There are lesser degrees of immunity, if that is what you are asking. In other words, they do not go as far as this one.

The subject of the investigation today was criminal immunity and I think these figures reflect that.

The CHAIRMAN. In other words, how many individuals in New York are considered diplomats by you on the diplomatic list?

Ms. ROOSEVELT. 1,607. Now, that is just the individual, the diplomat. His family, family members, are additionally 3,739. This is in New York.

The CHAIRMAN. That is approximately 4,000, 4,500, in New York.

Ms. ROOSEVELT. It is about 6,000 or 7,000.

The CHAIRMAN. Our mission and the Russian mission put together must be well over 1,000, I would think.

Ms. ROOSEVELT. Our mission to the U.N. has a staff of 130 persons. They are not entitled to immunity. The Soviet Mission is comprised of 85 diplomats, who have 179 family members. It should be noted that the subordinate members of permanent missions to the United Nations, who correspond in their functions to the administrative and technial staff and the service staff of diplomatic missions as defined in the Vienna convention, do nt have diplomatic privileges and immunities in the United States under Section 15 of the Headquarters Agreement. These employees have a more limited degree of immunity. This may explain why the number of persons in New York entitled to full criminal immunity is lower that the committee would have expected.

The CHAIRMAN. How many criminal cases during the last 5 years have been dismissed in the United States because diplomats have claimed immunity from criminal prosecution?

Ms. ROOSEVELT. Senator, I am not sure I have that categorized in the last 5 years. But could I just give you a little overview of 1 year?

The CHAIRMAN. I would like to get these if I could, and maybe ask them for the record.

Ms. ROOSEVELT. Could I supply that for the record. But if I could just put this in perspective it would help a little bit, I think.

I have had the figures done in a slightly different way, because I was interested to know what proportion of the criminal acts—how they compared in our whole system.

[The information referred to follows:]

Statistics on criminal cases for the last 5 years are being compiled and will be furnished with answers to the questions submitted separately to the Department by the Senate Foreign Relations Committee.

The CHAIRMAN. OK.

Ms. ROOSEVELT. I found that reported crimes in the Washington, DC, area for a 1-year period were 78,855, reported crimes of all sort, the entire criminal activity of this city. Out of those, 31 were committed by diplomats with immunity.

Now, among those eight were motor vehicle accidents; 10 were minor criminal acts, in other words shoplifting and small things, breach of peace and so on; five were serious criminal acts committed by four individuals. So that gives you some picture of what the 31 cases in that 1-year period were about.

I say that because we talked a lot about—the Senator talked about terrorism.

The CHAIRMAN. What would be the same figures in New York?

Ms. ROOSEVELT. I do not think I have them for New York, but I think it would be similar.

The CHAIRMAN. What I think might be best for when we consider this legislation, we need these statistics. Our staff will get together with you and maybe we will furnish these figures for the record based on a 5-year basis.

Ms. ROOSEVELT. There were about 27 offenses in New York in about the same period.

The CHAIRMAN. We will submit these answers to you for the record if we can.

There are also some questions that are of particular interest to Senator Sarbanes, who has worked on this, and I would submit those for the record, if you would reply.

Ms. ROOSEVELT. I am sorry, I did not hear you.

The CHAIRMAN. There are some questions from Senator Sarbanes, who has great interest in this matter, and we will submit them to you, too, and also from other members of the committee.

Ms. ROOSEVELT. Certainly.

The CHAIRMAN. The European Convention on the Compensation of Victims of Violent Crime, which entered into force on March 1, 1984, establishes guidelines for the compensation of violent crime victims. I gather the convention has led to progress in the establishment of compensation schemes in the European countries.

Do you think there should be a Federal fund here that could be used to reimburse the victims of crimes?

Ms. ROOSEVELT. I think it is something that definitely should be considered. I know that there is a bill in the House that has something to do with that and I think it is certainly something that should be weighed very judiciously by the Congress, and if in their wisdom they feel it should be——

The CHAIRMAN. I am sorry, I cannot hear.

Ms. ROOSEVELT. I say I know it is being considered in the Congress, in the House, and I think that that is a decision that, if you all in your wisdom decide to do it——

The CHAIRMAN. What would you think of the idea of requiring compulsory insurance by the Embassies as one of the quid pro quos for accreditation?

Ms. ROOSEVELT. I know they already have insurance for motor vehicle accidents and things of that sort, and I think it would be a good idea. This is a personal opinion, now.

The CHAIRMAN. It has long been assumed that civilized nations whose diplomats have committed crimes will be punished in their own country. Do you have any information as to the number of times a diplomat has been expelled from the United States for criminal behavior who has been brought to trial in his own country?

Ms. **Roosevelt**. I am sorry, Senator, I did not hear you.

The **Chairman**. I guess we both better talk a little closer to the mike.

The question is, Do you have any statistics as to what has happened to foreign diplomats whom we have expelled for criminal activity when they returned home? Have they been brought to trial?

Ms. **Roosevelt**. I do not. We do not have any.

The **Chairman**. Do you think you might be able to pull some information together or not?

Ms. **Roosevelt**. I think it might be rather difficult, but I think we can try. It is just hard to track some of these people down. They disappear.

Mr. **Kozak**. I might interject on that, Senator, that one of the problems you have in that area is one that we have, that if we have somebody expelled and brought home we may not have domestic jurisdiction to try them for a crime they committed in another area.

So that is another problem you face here, is how do you discipline your own people if the scope of the domestic law is not broad enough to do it.

[The information referred to follows:]

Question. The **Chairman**. The question is, Do you have any statistics as to what has happened to foreign diplomats whom we have expelled for criminal activity when they returned home? Have they been brought to trial?

Answer. The Department does not have statistics as to whether persons clothed with immunity who have been expelled for criminal activity have been brought to trial at home. While we do not have such information regarding each instance, we can provide this information in the case of Manuel Aryee, son of an attache with the Ghanaian mission to the United Nations, who in January 1981 was charged with raping two women in New York City. He was arrested but not prosecuted because of his immunity from criminal jurisdiction. The victims brought suit for civil damages against Aryee. He neither appeared nor asserted his immunity from civil suit. A default judgment of $1.8 million was entered against him and apparently remains pending. Manuel Aryee left New York on February 10, 1981, for Accra. The U.S. Government understood that Manuel Aryee would be tried for the crime in Ghana. However, he was not tried. There was a change in government at the time he returnedto Ghana and the new government did not pursue the case in the Ghana courts.

The **Chairman**. Thank you.

Within the last 5 years, in how many instances of criminal conduct on the part of a foreign diplomat has the State Department—have you sought to negotiate some kind of a waiver?

Ms. **Roosevelt**. We almost always do.

Would you like to address that?

Mr. **Kozak**. The question is as to whether we have tried?

Ms. **Roosevelt**. We always try to waive diplomatic immunity in a case.

The **Chairman**. What degree of success have you had?

Ms. **Roosevelt**. Not as much as we would like.

Mr. **Kozak**. That might be another one where a little expansion would be useful. Mr. Chairman, I think part of the problem we have had in this area has been a learning curve on the part of not only our people, but law enforcement officers around the country. That is one of the things that we have tried to address with the guidance that Ms. Roosevelt referred to, sending this booklet out to law enforcement officers.

Under the old 1790 law that was in effect, diplomats of virtually any kind had virtually total immunity. I think a habit developed amongst law enforcement authorities of saying: "Well, if the guy has some kind of diplomatic credentials we just will not bother investigating, we will not pursue the case."

We are trying to turn that around. I think part of the discrepancy in figures we were talking about may result from the fact that we were focused on the ones who have criminal immunity. There are a lot of people who are on international organization staffs and so on who do not have that immunity.

People may think they do, but they do not. We want to get that message across to law enforcement officers—those guys you can go after, and we are going to tell them they can go after them.

With respect to people who do have immunity, we are encouraging local law enforcement officials to go ahead and develop the case, whether or not they have an immediate prospect of prosecution. As Ms. Roosevelt mentioned, we are saying go out there and get the facts, get the witnesses, get it pinned down.

That helps us when we are trying to get a waiver, because if we can come to another government with concrete facts, instead of just being one person's word against the other.

The CHAIRMAN. In other words, the Department now encourages the police to charge diplomats with violations?

Mr. KOZAK. To bring the case up to the point where—we cannot serve process on them, as you know, but bring it up to that point where we have got all the facts and we can go for an indictment.

The CHAIRMAN. Since when has this been in effect, this change?

Mr. KOZAK. The last couple of years.

The CHAIRMAN. The last 2 years. Good. I have information here to the effect that in June 1985, as an example, the park police did not charge a drunk Soviet diplomat who seriously injured a Mrs. C.H. Malakov. The failure to charge at the time permitted the Soviet press attache to say to the New York Times: "He could not have been drunk because he was not charged by the police."

This is a procedure that would not occur any more, you say?

Ms. ROOSEVELT. No, we believe not.

The CHAIRMAN. Good. Well, I thank you very much. I think a great deal of this depends really—it is like this glass of water, is it half full or half empty? It depends which side of the curtain or on how hostile an atmosphere our own diplomats are serving.

I would agree with you, Britain, France, Italy, civilized nations of that sort, we could reduce the degree of diplomatic immunity. But I am just thinking of the reaction of my own colleagues, old colleges in the Foreign Service, who have pretty miserable times behind the curtain, as I know I did and others.

And I think their view might be a little bit different, and it would not just be in Communist countries. It could be in any country that is uncivilized or hostile. It could even be in a country like Saudi Arabia, for instance, or others.

I would turn the questioning over to the ranking minority member.

Senator HELMS. Mr. Chairman, thank you.

I thank you very much. I am not on either side of this curtain you talked about. I am on the side of the victims of the crimes, and nothing I have heard here this morning indicates to me that there is any concerted effort to do very much about a very serious situation. We can talk about that and so forth.

The State Department pulled a dirty trick on me when they sent Ms. Roosevelt up here. She is a lady whom I really admire and for whom I have great affection. And I want you to know that any question I ask you is not personal. It is just a matter of trying to get to the bottom of a lot of things that are of concern to me.

Ms. ROOSEVELT. Thank you, Senator.

Senator HELMS. You hit a real nerve, Selwa, in your prepared statement, where it appears to me that you are asserting that the treaty obligations of the United States have higher standing than the laws of the United States. Is that really your position?

Ms. ROOSEVELT. Yes and no, Senator.

Senator HELMS. It has got to be either yes or no.

Ms. ROOSEVELT. You know that I feel very strongly about upholding the laws of the United States. You and I both come from a part of the country that has a long tradition of honor and truthfulness as well.

And I also believe that we honor our treaty obligations. Otherwise we are in the same position as a country like Iran. I mean, I really feel strongly that we have to be the honorable nation, one of the honorable nations of this world.

Senator HELMS. I want to be honorable at home, too.

Ms. ROOSEVELT. I just do not want to be in the same category as the Iranian government, so-called government.

Senator HELMS. It is getting a little smelly, because the State Department has said that for years and years.

Ms. ROOSEVELT. No. But I am using that as the most extreme example, of course.

But I do honestly believe that your word, I mean, your honor, your word, all these things mean something. You come from that part of the country too.

Senator HELMS. Well, let me tell you what the courts have said, repeatedly, consistently, without exception. They have said that the laws of the United States may not be restricted, overturned, or otherwise overcome by a treaty signed by the United States.

Do you think the courts are wrong on that?

Ms. ROOSEVELT. I am not a legal expert. But I would defer.

Senator HELMS. No, no. I mean, he has already given you enough bad advice.

Ms. ROOSEVELT. This is not fair, Senator. I never went to law school.

Senator HELMS. Senator Ervin was sort of an ideal of mine. We did not belong to the same party. But I miss him as much as any member of my family, really.

He was an eloquent proponent of the position that the laws of this country are paramount. And I want you to know, in all affection and respect, that what you have just said, yes or no, or yes and no, is a departure from legal history.

For example, Congress had no difficulty whatsoever overturning the Chicago convention on air travel, and our bilateral agreement under that convention with South Africa, and if you want to go to southern Africa now you must first go to London. Now there was not any hesitation about that.

What I am saying to you, and you are an eloquent, charming representative of the State Department, and I wish some ugly old man was sitting there and I could have at him. But the State Department cannot have it both ways. And that is what you are trying to do.

Mr. **Kozak**. Senator, if I just might make a comment on that to give you some——

Ms. **Roosevelt**. In your words, Senator Helms, I will let an "ugly old man" respond.

Mr. **Kozak**. I think the situation, the legal situation is pretty clear. The Constitution says that treaties and the laws of the United States are the supreme law of the land. That is not inconsistent with what you are saying.

When the Congress passes a law that is subsequent to a treaty, that if that law is inconsistent with the treaty the law will take precedence as a matter of our domestic law. On the other hand, if the Senate in the exercise of its advice and consent to treaties passes a treaty subsequent to a law, that can likewise change the law.

It is the one that is later in time that governs, if there is an inconsistency between the two. What you cannot do that way is to change our international obligations. In effect, the Congress and the Executive, by signing off on the law, have the capacity to put the United States in violation of its international obligations.

And that is binding as a matter of our domestic law. But that does not mean that that makes it valid as a matter of international law.

I think on some of the other items you mentioned, that we raised the same point. The Congress in its wisdom decided to go ahead in some areas, and to take actions as a matter of domestic law that are contrary to our treaty obligations.

And we have, pretty consistently advised against that. When it happens it is binding, as a matter of U.S. constitutional law, and we have to live with it. But it does not change our international obligations.

Senator **Helms**. Are you recognizing that U.S. law is paramount?

Mr. **Kozak**. If it is later in time, and if it is inconsistent.

Senator **Helms**. If it is later in time?

Mr. **Kozak**. If you have got a treaty to which the Senate has given advice and consent it is the law of the land, the same as a statute passed by Congress. It has the same effect as a matter of our law and our courts will apply it that way.

If Congress later comes along and passes another law to contradict that, they can do that.

Ms. **Roosevelt**. Senator, could I just address one thing that you said, which I would like to point out.

You said that you did not hear anybody expressing interest in the victims, their problems. We have really done as much as we possibly could, and we have been successful in some cases that were very bad.

We have tried to get the Embassy, of their own will, to compensate victims of certain crimes and that sort of thing. We do that all the time. Now, we are not always successful, I would say.

But we have been successful in some cases that have been noted even, and some of the victims that are here today. We have been able to get the embassies to acknowledge their liability.

I just want to say one thing, in my experience, the overwhelming majority of the diplomatic corps here, as you well know, are extremely fine law-abiding people.

And when crimes do occur, they are every bit as upset as we are because it is terrible for their image, terrible for their relationship to the United States, it is terrible for their relationship with this community. They also suffer.

One diplomatic child going amok reflects badly on the entire diplomatic corps, and they feel this very strongly. And their colleagues feel it, you know, and express it to them.

So we do try to get them to acknowledge in other ways, if we cannot do it in the framework of diplomatic immunity, we do it anyway on a compassionate and personal basis.

Senator HELMS. We will hear from some other witnesses, perhaps, on that very point.

Mr. Chairman, I anticipated some voices of alarm and handwringing and all the rest from the State Department over the fact that the proposed legislation makes clear that if there is a conflict between it and any international agreement or convention, then the proposed law would govern.

There has been some of that here, charmingly, I might add. But I personally believe that this concern, and Senator Specter said it well when he was in that chair there just a minute ago, it is something of a red herring since there are plenty of remedies available to us, ranging from ending diplomatic relations, that is all the way on one side, to reducing or eliminating foreign aid.

Now a lot of these things happen as a result of violations by diplomats whose countries are coming over here with bushel baskets, wanting the taxpayers' money of the United States.

You know, we ought to say to them, "Not another farthing, if you do not straighten up and fly right." Now, all of these conventions, the Geneva convention and so forth, did us a whole lot of good, I think, in the Iranian hostage episode.

Anyway, taking you and your attorney and those whom you represent at your word, I have a little amendment that I prepared in anticipation of what has transpired.

And I would like the two witnesses, Mr. Chairman, to examine this proposed amendment, because if it were offered and if it were adopted and became law, it seems to me that a lot of the discontent and henny-penny, the-sky-will-fall attitude would be assuaged.

So let me, if you will, Mr. Chairman, send this amendment down to the folks and ask them to look at it. Now, this amendment, I will say while this is going on, will allow the President of the United States the discretion to exclude from the coverage of the act up to 5,000 family and support staff.

It also requires the foreign Ambassador to assert immunity for any one of the up to 5,000 people charged with crime. Finally, it incorporates existing law, which requires the President to secure the release of any American citizens wrongfully imprisoned by a foreign government.

Now, how does that proposed amendment grab you? Do you want to take it and look at it for a while?

Ms. ROOSEVELT. I think I need to look at it.

Senator HELMS. OK.

[Pause]

Senator HELMS. Let me go on with a few questions. I should not impose on the chairman's time. And we have a bunch of witnesses to follow. Let me just as one or two questions which I think are relevant.

Now the State Department's interpretation, present interpretation, as I understand it, interpretation of a diplomat or a diplomatic agent, this encompasses essentially every foreigner working at an Embassy, regardless of his position. Does it not?

I mean, is that not a matter of practical fact?

Ms. ROOSEVELT. No. I do not think so. But I would like Mr. Kozak to respond.

Mr. KOZAK. Our normal practice is, to accredit as diplomatic agents people who are the genuine diplomats, heads of sections, political counselors, those sorts of people. Then you have administrative and technical staff, and then a lot of support staff.

There is a distinction in the Vienna convention between——

Senator HELMS. You mean there are no cooks, no butlers, no drivers covered?

Mr. KOZAK. They are not supposed to be, not as diplomatic agents. They would come in as administrative staff or support staff, depending on their particular job and function.

Senator HELMS. Well, Mr. Chairman, I want to get on to some of the others, and I certainly do not want to cut these folks off. If they have anything further they want to say, fine.

But I want to get to the other witnesses. So I would reserve the right, if I may, to file some written questions with the distinguished protocol officer.

The CHAIRMAN. Please do. And also all members of the committee will have the right to submit questions within the next few days, until the end of the week. And we would hope you would have replies within 2 weeks thereafter. We will be in recess.

Senator HELMS. Yes. Do it while we are gone.

The CHAIRMAN. I have just one more question. I have been looking at a book, Diplomatic Crime. In your viewpoint do you visualize Washington as being the center of this sort of activity more than New York or more than other capitals of the world?

Ms. ROOSEVELT. I do not know whether more than other capitals of the world. Certainly we hear about egregious behavior everywhere.

I mean, it does happen. People are the same everywhere, I think, as far as that goes. And children, juvenile delinquents, juvenile crime is certainly on the rise. I believe that Washington and New York probably have an equal amount. They are two large metropolises with all the unfortunate elements that exist in both cities.

The CHAIRMAN. Thank you both very much indeed. I know you have an engagement later on. But if you could stick around with us for as long as you can. Thank you very much.

Ms. **Roosevelt**. Thank you both.

The **Chairman**. I appreciate your coming up, Ms. Roosevelt. Now we have a victims panel, people who have really suffered under crimes committed by so-called diplomats.

Mr. Chuck Ashman, coauthor of the book, Diplomatic Crime, from New York; Mr. Steve Goldstein from New York; Mr. Ken Skeen, Silver Spring, MD; Mr. George Mosely, on behalf of Mrs. Margaret Curry, Queens, NY; Mr. Pete Christiansen, New York Police Department, detective, retired, from New York; and Mr. Dennis Martin, national President of the American Federation of Police Officers, Washington, DC.

I would add that after this panel has gone, we still have another panel. So for that reason I would ask the various individuals in this panel if they could limit themselves to, say, 4 minutes of testimony.

Your full statements will be inserted in the record, and then we would also have time to ask you some questions. The light will show green for 3 minutes, yellow for 1. And then it becomes red.

STATEMENT OF CHUCK ASHMAN, JOURNALIST, AUTHOR OF DIPLOMATIC CRIME, NEW YORK, NY

Mr. **Ashman**. Senator, I have been told that since there are some other witnesses who are not here who I am speaking on behalf of and have brought these people here, that I would have 10 minutes and the other witnesses would have 5.

Your counsel gave me that information. I will cut it down, if you wish, but I would appreciate it.

The **Chairman**. OK.

Mr. **Ashman**. Very briefly, I am Chuck Ashman. I am a journalist and author. I currently cover the United Nations and international stories for a variety of newspapers and the London Broadcasting Co.

I want to thank Senator Helms on behalf of victims all over the United States for the courage to do what should have been done decades ago, in bringing it the public attention.

I want to thank Senator Pell for doing the impossible and having a hearing before recess on such short notice. And I think the Senate of the United States owes the media a thank you.

The last time I remember a book and the media combining to get this much attention this quick is when Upton Sinclair told us about child labor abuses. So I think that the media takes a bum rap sometimes.

If it were not for all the TV and newspaper coverage in recent weeks, I am not sure we would have been here. And Senator, I thank you for your letter saying the bill was at least in part inspired by the book that Pamela Trescott and I wrote.

I would like to very quickly agree with Ms. Roosevelt on one sentence that she said, and get that out of the way.

The correct statistic, as we know it, based on previous testimony by the State Department in front of several committees and by statements given out by the United Nations, and in freedom of information petitions, is that there are between 27,000 and 37,000, depending on the types of immunity you are combining together.

I would also like to clear the air, because it was kind of left dangling on your last question, Senator. The diplomatic agents may indeed be limited. But unfortunately, the technical and administrative staff are immune from rape charges, murder charges, and everything else.

I mean, if not, somebody has got to explain to me, when Detective Christiansen speaks, why the biggest serial rapist in New York who they caught who raped 15 women was set free because his daddy was the lowest ranking military attache from Ghana.

If the daddy did not have diplomatic immunity for rape, it does not derive to the son. So we are talking about a community of some 37,000 people, of varying levels of immunity, but too many of whom have immunity from the crimes you are talking about.

And by the way, the way we read the bill, since you are very clear, saying you are not talking about diplomatic agents, we think you are talking about the son of a diplomatic agent. Or the sister or the cousin.

Pamela and I traveled to 7 countries and to 26 of our States researching the book, Diplomatic Crime, which details the history of abuses. We have brought some witnesses here today you are going to hear that represent a cross section.

We could have filled the room and the hall. But in the interests of time, we brought two cases that we think are very, very representative of particular types of crimes, and two police officers who can address the situation.

It is not the Ambassador who rapes. It is more likely his son. It is not the Ambassador who drives drunk and kills. It is more likely his chauffeur. But we grant immunity.

Mr. Chairman, what is of paramount importance to remember is the single rationale behind the creation of diplomatic immunity is to ensure that a diplomat can perform his functions without being hindered.

And there was no intent to allow diplomatic immunity under the Vienna convention or anything else to become a license to rape or steal or kill. And to ignore the laws of this country.

Our research shows that a very noble idea has become perverted. Diplomatic immunity has become a license to allow diplomats and their dependents to flaunt our laws in the United States.

We talked with 300 victims, members of their families, police and government officials, and I might add that in the past 30 days since all this publicity began and the book, we have learned of 13 other cases that we never heard about.

Now, I have got some inaccuracies in the book. I am upset about that. The reason I have inaccuracies is I go to the State Department and they give me a number that they believe to be true.

But if you ask Ms. Roosevelt, or Mr. Gookin who is here, whether they know about all the cases, they will tell you no. They even cite it in her statement.

They did not know about the most arrogant case of the year, the Embassador from Afghanistan, a country we are trying to help, and his son running over a woman in a hit-and-run a couple of weeks ago, because the police did not tell them about it.

The police assumed it was diplomatic immunity. That happens all over the United States. A policeman will tell a witness, there is nothing you can do about it. Nothing gets filed.

The State Department does not know about it, they cannot tell you about it and the public cannot know about it. That might be considered as another amendment, some reporting procedure mandating that police agencies in every single case do what England does.

England has been cited. They have a central reporting system. Automatically, the foreign office will know about it. You should know about it. The public should know about it.

We have to share the frustrations of our law enforcement officers. You will meet the president of the National Federation of Police. You will meet a very courageous cop, one of New York's finest. He is a frustrated man because of a case he handled.

We have been told by representatives of the State Department that the U.S. Government takes the position that immunity protections offered diplomats and their dependents in the United States have to be kept unchanged, because our diplomats and their dependents serving abroad have to be protected. And we find that to be a fallacious argument.

I agree certainly with Senator Specter. I have got to tell you. If some youngster, some 19-year-old son of an American Ambassador rapes 15 women overseas, by God, he should be punished there, here, or somewhere.

Is it really the position of our Government that if one of our representatives abroad gets in trouble, serious trouble, a violent crime, that he should get away with it because daddy is a diplomat or he works for one?

We think not. I would like to cite an example. I am very, very proud of this country. But I am not proud in this example. I know there are some British press here.

Ask them about the uproar when they heard about this. There is a man, and I hope you can find him, Senator, I cannot. The press corps has been looking for him for a year. His name is James Ingley.

In December 1985, Scotland Yard picked him up in London and charged him with child molestation. While he was being interviewed, they went to his home and found a cache of child pornography, and they were ready to prosecute him. And they had every right to think they could.

We have got a policy. It has been stated before. We will waive diplomatic immunity if it is in a country that we have a sensible relationship with and they have a decent standard, a decent procedure somewhat compatible with our own.

While he was being held, a call came from the U.S. Ambassador to that country, to the foreign office, insisting he be released. He was married to a lady that worked at the American Embassy. And that was wrong.

He has never been tried here, there, or anywhere else. Now there is a rumor, I hate to use the word leak, it has only been a few days since, you know, that became part of our regular vocabulary for other hearings.

But we have been told by people in the Justice Department that it happened to be that he was married to a woman at the American Embassy who had a "sensitive job." She was not the cultural attache. She was not the Ambassador's assistant.

She was someone attached to HQ Cheltenham, a spy station in England, where our satellites and the British are working together to find out what is going on. Now, I am the last one in the world that wants to see us put anything out there that the Russians can take advantage of.

But it is a pretty lame excuse to say the woman is involved in sensitive work, therefore we are going to bring this man home and you cannot prosecute a child molester in the country that is perhaps our closest ally. We ought to be ashamed of ourselves.

It was as much of a responsibility for us to cooperate in that man being punished as there is in the Government of Ghana to see to the serial rapist you hear about should have been punished.

The United States has no right, I think, to act arrogantly that way. I think that is what Ms. Roosevelt was talking about. That is acting like those other countries, throwing away the rule of law. Totally, totally, and completely wrong.

We believe that S. 1437, Senator, is an important step in righting some of the wrongs in the diplomatic immunity system. We support the bill on moral, political, and legal grounds.

We also believe with the risk of being presumptuous that there are other problems that should be dealt with. Some of them have been touched upon here today. If a diplomat or immune dependent leaves this country voluntarily, he should not be allowed to return.

You spoke earlier of the testimony of a woman we call Judy, to protect her, the mother of a girl we call Holly in the book, to protect her. Everybody knows what has happened. It happened in this town.

That girl was raped by a boy who bragged about his diplomatic immunity as he raped her. And he went home voluntarily and came back with another kind of visa, moved across the street, and taunted the girl.

It has been in the past few weeks that we finally learned the Saudis have thrown him out. I would like to think that could have happened 1 year ago or 11/2 years ago, before you introduced the bill and before all this fuss was made.

Second, it is just a ridiculous situation with respect to these statistics, these numbers, and trying to get accurate information, and I cannot fault the State Department.

They just do not get the information. I was in Arizona, the last place I would expect to find a violent crime involving diplomatic immunity, 3 weeks ago, and at a university a campus police officer told me about a case of a diplomatically immune rapist who went home when he was caught in the rape.

He did not bother to report it to the city police, because he knows the rules on diplomatic immunity. The girl did not file a complaint. The State Department does not know about it.

By the way, when you are thinking about these 27,000 to 37,000 immune people, Senator Pell, it is not just New York and Washington. You have got a couple hundred in Chicago, and in Houston, and in Dallas, and in San Francisco, various levels, I grant you, of diplomatic immunity. But immunity nonetheless.

We do not have accurate or complete information, and we need a system that enables the Senate and the public to have that accurate information.

You are going to hear from various witnesses who can tell you their stories. But Ken Skeen, who sits to my left, was involved in a particular case that warranted secondary attention.

As a result we filed supplementary freedom of information petitions. I have discussed this with Ken, and what we would like to do for the record is not have him tell you what happened but have the Justice Department tell you.

Because we have come across a letter from the U.S. Department of Justice, which if I know how to read the English language says, he should not have been shot. Not because it was morally wrong. But because the shooter had a previous incident and should have been thrown out of the country.

First of all, to clear the air, on December 2, 1982, the U.S. Attorney for the District of Columbia supplied a letter to Ms. Roosevelt, a copy of which we obtained from the Freedom of Information Act recently.

And it states that the son, his name was De Sil Vera. He is the son of the Brazilian Ambassador to the United States, was in a bar, and said, "I am with the Mafia and I am going to kill you."

He pointed one of the two handguns, pulled the trigger. The first gun failed to fire. As he ran out, he pointed one of the two guns at the pursuing employees. Three shots struck one employee, Kenneth Skeen.

It goes on to talk about how this boy hid his identity. They finally found out who he was, and of course he was immediately released. The date, Senator, is December 2. This man is in a hospital fighting for his life.

I would like to read the last paragraph of the U.S. Attorney's letter, and I sure would love to know what State Department says about this:

> We regret we are unable to prosecute and seek appropriate punishment for De Sil Vera for the violent offenses he apparently committed. We also note he had been charged with assaultive conduct on a prior occasion, with prosecution on that charge also having been blocked on grounds of diplomatic immunity.

Now, I have heard about the first-bite doctrine with dogs. But do we have a first-assault doctrine with sons of Ambassadors? Do they get another crack to see if they kill them? It is insulting.

This letter is from Stanley Harris, the U.S. Attorney who promises in his last paragraph cooperation. Now, mystery begins. Senator, I am sorry, may I finish this one document? It will take me 1 minute.

On December 2 that day, an internal memo was prepared for Ms. Roosevelt for her meeting with the Brazilian officials. It is signed to Ms. Roosevelt and Mr. Gookin: "Thoughts for your meeting at the Brazilians. Express your sorrow and concern." No one came to see this man in the hospital. They went to express sorrow to the Brazilian shooter.

"Awaiting written report from U.S. Attorney's office." We have that. We will submit it for the record.

"Realize the ambassador is out of town. Ask where the boy is now. Suggest he stay close to home. Legally we cannot force this boy to leave. But we believe the embassy will do what is in its best interests. Use a counseling approach. The charge will undoubtedly assess the consequences. It is up to them to remove an embarrassment."

If that is an example, and I admire the lady too, of the toughness we are talking about, I do not want to know what it is like when they take it easy.

[The prepared statement of Chuck Ashman may be found in the appendix.]

Ms. ROOSEVELT. That is not exactly, excuse me. That is not what happened.

Mr. ASHMAN. I would like to introduce Ken Skeen to tell you his feelings today, and to answer any questions you may have about this incident.

The CHAIRMAN. We will ask no questions until the whole panel is complete. And then I would like to give Ms. Roosevelt an opportunity to comment on your statement. Mr. Skeen?

You will all be limited to 5 minutes.

STATEMENT OF KEN SKEEN, NEW YORK, NY

Mr. SKEEN. I would like to say that I understand why we have diplomatic immunity in this country and why it does exist.

I was working at a bar back in 1982, on November 29, and this man was getting erratical in the bar and we asked him to leave. He starts pulling out these handguns and I am in fear for my life. So I did, you know, what I thought was best. And we end up fighting.

The police came and did their job. We did, you know, confiscate him. They contained him. They brought him down to the police station. I went to the hospital. I was half in shock.

The next day when I woke up and came out of surgery, I was pleased to hear the doctors tell me that, you know, I was going to live. But then when I heard the news that this man was a diplomat, and he got cut free, that blew my mind.

I cannot understand why anybody in this whole world would get away with rape, murder, assault. Nobody has the power of God to take another man's life, no matter what his job or what his position is.

I am an American. He is over here in my country, on my property. He shoots me. I am working. And I look like I am the bad guy and he walks away scot-free. I am still under, right now I cannot even hold a job.

I have moved out to the country. I am in a doctor's care. I am still fighting the insurance company, of where I was working at. They are giving me a hard time over the situation.

I was just wondering if anybody here can explain how anybody can get away with attempted murder, running over people, raping women in this country. We have a very civilized country. We are not a country where we do not have laws. We protect our own people.

I just cannot understand it up till this day how somebody can walk away from a serious crime.

The **Chairman**. I thank you for your statement. The anguish and misery which you have been put through are dreadful. I agree. Mr. Goldstein.

STATEMENT OF STEVEN B. GOLDSTEIN, NEW YORK, NY

Mr. **Goldstein**. I received a letter from Senator Helms on Monday instructing me to limit my oral testimony to 10 minutes. While the written statement could be as long as I wanted. I hope you would honor that.

The **Chairman**. Right.

Mr. **Goldstein**. I was acting as per Senator Helms' instructions. It is about 8 minutes.

The **Chairman**. We will make it 10 minutes.

Mr. **Goldstein**. Mr. Chairman and members of the committee, I am here today as a victim of diplomatic crime and to join Chuck Ashman, Pamela Trescott, and other victims here, as well as those who cannot be, in urging you to favorably consider the bill before you.

If someone were to tell me about the incident that happened to me I would probably not believe it. I wish it were not true. Unfortunately, not only is it a documented fact, but it is a recurring nightmare.

In April 1985 I was a residential real estate broker selling condominiums and cooperative apartments on the upper east side of Manhattan. On April 3, I mistakenly left my umbrella at a client's apartment.

The next evening, at about 9:45 p.m., I parked my car in front of 178 E. 72d Street, directly across the street from the building where I had left my umbrella. Parking on the streets of New York is often a difficult task.

However, after 7 p.m. most parking restrictions are lifted because commercial vehicles have finished their deliveries. I parked my car and ran across the street to retrieve my umbrella.

I expected to be back in my car within 5 minutes, literally. I stayed in the lobby. One of the doormen went with the elevator attendant to the 17th floor and came down with my umbrella.

As I spoke to the doorman, I occasionally glanced across the street toward my car. Within 5 minutes I had the umbrella in my hand and was headed back toward my car. As I crossed the street, I saw a light blue Mercedes Benz pull behind my car with his front bumper flush up against the rear of my car.

I had parked with the front of my car almost touching the rear of the car in front of me, so in essence I was pinned in by the driver of the Mercedes. Three ~~cars in~~ a row, front to rear and I motioned to the driver of the Mercedes to back up so that I could get my car out. Instead of backing up, the driver jumped out of his car and in an absolute rage, he pointed to a sign on the lamppost and screamed, "You're in my spot, you're in my spot." His eyes were bulging out of his head. He was extremely angry. He was in a rage. He looked like a madman.

Eighteen inches, I repeat 18 inches of the rear end of my car was overlapping into a diplomatic parking zone. Although I know the city of New York does not assign any one parking space to any specific vehicle or person, I had no desire to argue with this enraged individual.

"Fine," I said. "Move your car, I will leave, and you can have your spot." It seemed pretty simple to me. It was 9:30 a.m., I wanted to go home already. He started screaming again, and I was getting impatient.

All he had to do was back up his car so I could pull out and this whole thing would be over. After listening to several minutes of his screaming and other irrational behavior, I saw the driver run into a nearby townhouse, leaving the Mercedes parked and my car still pinned in.

Several doormen from different buildings had witnessed the entire commotion, including those at the building where I had just picked up my umbrella. In my mind the incident was now completely over.

His way of getting back at me was to leave me pinned in. So I got in my car, locked the doors, and I started to inch the car forwards and backwards to get out. I was almost out of the spot, and the next thing I know is that he is standing on the curb looking at me through the closed passenger window with a pistol.

A shiny silver pistol. The pistol was pointed at my face. When I was in college, I completed Officer Candidate School for the U.S. Marines. I was trained right here in Quantico, VA.

I could see the clip protruding from the bottom of the handle. He then took the gun and smashed the passenger window of my car. The glass came flying in all over me and all over the inside of my car. He then put the gun to my head.

Without a doubt, I thought I was going to die. I was covered with glass. I wear glasses, and they protected my eyes.

To this day, nobody knows if he pulled the trigger or if the gun misfired, as was the case with Kenny Skeen. The police, for obvious reasons wanted to view the gun. After holding the gun to my head, for some reason he just stopped and ran back into his townhouse.

Maybe it was because of all the witnesses, maybe he had a change of heart, or maybe the gun misfired. Maybe it was because he cut his hand on the window.

I jumped out of my car and I yelled to the doorman to call the cops. I then ran to the corner where I saw a Metro Transit Authority police car. I screamed for him to call the cops.

By the time I came back to the car, the police had arrived. The driver of the Mercedes Benz calmly appeared from his townhouse, this time without the pistol, carrying a little black booklet in his hand, roughly the size of a passport. It was black with the silver insignia of the United Nations on the front.

"I am the Ambassador," he said, as he handed this identification to the police. The police opened it up. Inside there is a picture. There were about 10 cops standing in a semicircle.

They looked at the picture and they looked at him. It seemed to match. They took down some information. The cops began to question him. He put his finger in the officer's face and said, "I don't like your tone of voice."

He turned on his heels and walked back inside his townhouse. That was the last I ever saw of him. That townhouse was foreign soil. The police could not go in there to talk to him or to examine the gun.

A police sergeant, then a captain, came down to the scene to make sure standard operating procedures were carried out. I followed the police back to the 19th precinct where the man's immunity status was checked.

It was almost 1 hour before it was determined that he was indeed the Mexican Ambassador to the United Nations. I was told there was nothing I could do except go to the U.S. mission to the U.N. the following morning and lodge a formal complaint.

First, the statement from the Ambassador's residence claimed that I had rammed his car and attacked him. By the next morning the story changed again. Not only had the Ambassador not been at the scene, but it was the chauffeur who was driving the car and that I attacked the chauffeur with a lead pipe.

That is the way those with full diplomatic immunity twist things. Ten New York City police officers, six doormen, a young couple who happened to be walking down the street, and I positively identified the Ambassador.

But the Mexican Embassy flatly denies the Ambassador was even there. Somebody is lying. When I found out that it was actually the Ambassador, I was livid and petrified. This man is chosen to represent his country and he almost killed me over a lousy parking space.

If this individual typifies the mentality of those appointed to solve the life-threatening problems of this planet, to prevent World War III, then Mr. Chairman, we are in deep trouble.

The next morning, Friday, April 5, I met with Bob Moller at the U.S. mission to the U.N. Bob placed six pictures in front of me and asked me if any of the pictures looked like the man who almost killed me the evening before.

I picked the Ambassador within a couple of seconds. Bob Moller informed me that John Gavin, the U.S. Ambassador to the United Nations, was on a plane to Mexico City to meet with Mexico's top officials.

Unbeknownst to me, I was a blessing to the Reagan administration. Three months earlier, U.S. drug enforcement agents were tortured and murdered in Mexico. Although the United States did not know who actually pulled the trigger, they did know which drug kingpin ordered their execution.

The United States sought the extradition of the drug kingpin. Mexico flatly refused. United States-Mexican relations were at an all-time low. My worst nightmare was Ronald Reagan's dream come true. I was the vehicle the Reagan administration used to get back at Mexico.

After 3 frustrating months, Ambassador John Gavin finally had some leverage. Two weeks after my incident, this drug kingpin was extradited to the United States. This is no coincidence.

My Government uses these incidents to the best of its advantage. No thought whatsoever is given to the damned victim. My documented incident is unusual. Most crimes involving diplomatic immunity are committed by either the relatives or employees of diplomats.

My incident was committed by the actual Ambassador. I fully understand and respect the umbrella of immunity covering these foreign diplomats acting on official business in this country, and to protect our American diplomats overseas from trumped-up charges.

But the nauseating fact is that children of the lowest ranking secretary in the office pool of a foreign consulate can gang rape, violate, beat and rob our mothers, our wives, our sisters, and our daughters.

And the worst thing that can happen to them is they get a free plane ride home. This is very difficult to digest. These same animals with no regard for American lives can then come back into our country, live across the street from the victims, and taunt them.

This atrocity happened to a teenage girl right here in the District of Columbia area 4 years ago. The law as it stands today is grossly inadequate. These violent crimes, if committed in the criminal's own country, would result in castration or death. In America they walk away scot-free.

There is no compensation for the victim. No place where the victims can go to get their medical bills paid for when the sons of diplomats shoot them. No place where a rape victim can go to pay for the counseling she may require. And there is no place where I can go to get my window replaced.

The list is endless, the results are the same. As an American I automatically associate the colors red, white, and blue with the flag. As a victim, I cannot help but associate these colors with the license plates of legal foreign assasins who operate without any fear of due process.

I cannot overemphasize the deep pain and frustration victims feel knowing there is no legal recourse toward the person or persons that have committed these atrocities. This hurt is more painful than the actual incident.

Mr. Chairman, please, I beg of you to do whatever you can so that we victims can again associate red, white, and blue, with the colors of our flag, and not with legal foreign assassins. Thank you.

The CHAIRMAN. Thank you very much, Mr. Goldstein. Mr. Christiansen.

Senator HELMS. Excuse me, Mr. Goldstein. That was the Mexican Ambassador to the United Nations?

Mr. GOLDSTEIN. Yes, Perforio Munos-Ledo.

STATEMENT OF PETER CHRISTIANSEN, NEW YORK CITY POLICE DETECTIVE, RETIRED

Mr. CHRISTIANSEN. Thank you for inviting me, Mr. Chairman. My name is Peter Christiansen and I have just retired from 16 years of service as a New York City police detective. I am here today to join victims of diplomatic crime and urging passage of the bill before you.

As you know, there are many frustrations in police work. But let me assure you that none is more difficult to deal with than the knowledge that you have apprehended a criminal, and must set him free after only minutes, because he enjoys the status above the rest of the citizens you are sworn to serve and protect.

Over several months on the upper east side of New York, I conducted an investigation into approximately particularly brutal rapes. The modus operandi of the rapist in each case convinced us we were dealing with one man.

A composite sketch was prepared, and we began our search. We knew the area that he frequented, and police officers in that area were assisting me in the search.

A brave young lady, who had been raped by this man, was assisting in the search also. She and her boyfriend were walking regularly in the area that the rape had occurred, hoping to spot her assailant.

On February 6, 1981, I was with other officers, and the man fitting our composite sketch was spotted. We were following him when he was confronted by one of his former victims.

Her boyfriend jumped this man and a fight began. I was literally across the street and then ran over. The victim hollered to me. Pete, that is the man who raped me.

I then took the accused in custody, and he immediately claimed he had diplomatic immunity, although he had no identification on him.

Pursuant to New York police procedure, I was able to take him to the nearest precinct. If he had had full diplomatic documentation on his person, and it was verified, he would have been released.

At the precinct I began calling other victims. One victim came immediately. The accused kept insisting he had diplomatic immunity. In fact, he kept laughing and mocking me that he was about to leave in a little while.

The second victim observed the accused in what I believe to be a very valid lineup. And she identified him as the man who raped her also. In the meantime, the State Department and United Nations officials had arrived, and I was ordered to release this person.

As he left, he snickered and laughed again at the crying victims and myself. Frankly, having handled a great many very serious crimes, I believe this to be the most upsetting to me personally.

I might add that the account of the incident in the book by Mr. Chuck Ashman and Ms. Pamela Trescott is totally accurate, and that they deserve recognition and thanks for bringing all of us together.

I have retired as a policeman but not as a father. Not as a citizen, and not as a man. I wonder how many more cases there will be, how many more laughing criminals and helpless victims.

I served in the area where the United Nations is located. And I know the importance of protecting special guests to this country. But what about protecting this country from special guests.

If anyone in this room were to commit a violent crime, they would stand before the bar of justice. And that is how it should be. There is no reason for criminals to go free because their parents or because their employer serves a foreign government.

For all policemen everywhere, please pass this bill.

The CHAIRMAN. Thank you very much, Mr. Christiansen. Mr. Leifer.

STATEMENT OF MAX D. LEIFER, ESQ., ON BEHALF OF MARGARET CURRY, QUEENS, NY

Mr. LEIFER. I am appearing on behalf of Ms. Curry, who is in the hospital. Mr. Mosely could not be here today. She was the actual victim.

The CHAIRMAN. And you are her attorney?

Mr. LEIFER. I am her attorney of record.

The CHAIRMAN. Carry on, Mr. Leifer.

Mr. LEIFER. The purpose of my appearance is twofold. First, it was to supply some information that you asked for before, what happens to some of these victims.

Most importantly here is we have a person that, in my case, my client, who has to be confined to a psychiatric hospital. She is in Gracie Square Hospital right now under psychiatric care.

One of the reasons is because of the emotional trauma that she went through. I think you have seen these people testifying today. And not only the crime itself is the issue here, but the emotional damage that is here.

And this damage is something that is going to exist for many years. Fortunately for them they are strong enough to be here today. Unfortunately for her, she is not.

You should also know something about Ms. Curry. She raises three children. She is a single parent. She is financially now in a very serious situation. Fortunately, hospital care is being supplied by Blue Cross.

But the doctors are not being paid for. Care is also not being given to her family. Fortunately, they are older children. One of her children, I think, is in the military. But more importantly is the economic hardship these people have.

So not only is the bill important for the purpose of the criminal aspect, but I also would like you to be aware of the civil aspect that should be also considered. There was some discussion of a fund, and there was also indication of insurance.

But if you note very carefully the insurance as we have in New York, and I do not know about the other states, it is very limited. And some of that insurance is just not adequate and will not cover some of these crimes.

And these people fall into an area, a niche, where they do not have any benefits at all. So this is something that should be considered as part of the bill, the civil aspect, the compensation.

There is also no adequate remedy of law. Even though you may have an insurance policy, you cannot sue these people. If you cannot resolve it with the insurance company, if you cannot resolve it with the appropriate party, you have a serious problem of how you bring on an action.

But that is not the key thing here. The key thing for you to also be cognizant of is the severe impact that this had on Ms. Curry, who is an innocent person.

All she asked for, and the reason I am here on her behalf, because obviously she cannot be here—and Mr. Mosely is not capable—is that she wants an accountability, just like each and every one of these people here wants an accountability.

We are citizens. We pay our taxes. We have certain rights and certain guarantees. The same should be also given to each and every one of us when a diplomat is involved.

We are not saying that there should be serious affect on the country itself. Because obviously the country does come first. Individuals are important, but the country itself is the greatest importance.

But in the same respect, the little person also has certain rights. And that should not be lost or disregarded. And this is really the whole thing of why we are here today. Is to protect those rights and make those people whole.

And that is the effort of the Senate, and I think that is the purpose of this hearing, and the essence of what we are trying to do, and that is the purpose of why I am here today on behalf of Ms. Curry.

The CHAIRMAN. Thank you very much. I think we are all very, very conscious of the misery and trauma and the sadness that has befallen the victims of these crimes.

We now come to Officer Martin, National President of the American Federation of Police Officers. Welcome, Mr. Martin.

STATEMENT OF DENNIS RAY MARTIN, NATIONAL PRESIDENT, AMERICAN FEDERATION OF POLICE OFFICERS

Mr. MR. MARTIN. Mr. Chairman, members of the committee, ladies and gentlemen. My name is Dennis Ray Martin, National President of the 68,000-member American Federation of Police.

We are a nationwide, nonprofit federation of law enforcement officers, holding both seminars and training workshops throughout the country. I also represent and serve on over 60 national boards and commissions promoting police professionalism at a Federal, State, and local level, with a special concern for our national defense program.

I am also director of training at the Saginaw County Sheriff's Department and eight other local police agencies in Michigan. The majority of our members in Washington, DC, New York, Chicago, are the line officers who work on foot patrol and in the patrol cars.

I am here to represent their concerns which occur on a daily basis. Crimes committed by individuals who are presently totally exempt from prosecution by reason of their very broad privilege of diplomatic immunity.

I believe that the one word to describe our feelings on this matter is frustration. There are an estimated 40,000 persons who are presently covered under the shield of diplomatic immunity.

It is a fact that the vast majority of those individuals are not career diplomats. Most are members of diplomat families or employees, who unfortunately take advantage of the good nature of our citizens.

We as law enforcement officers are trained that no one is above the law. But our own committee chairman on intelligence and narcotics matters has advised me that diplomatic credentials are sold by some nations for the purpose of preventing Customs agents to discover drugs being brought in and money being shipped out under diplomatic immunity or other criminal enterprises.

We are concerned that terrorists could, and we have every reason to believe, shipped under the protection of diplomatic, pouches such items as small armed weapons, explosives to be used against law enforcement officers.

It is acknowledged by the FBI that the agents of the KGB are free to move about the United States after assignment to staff positions at the United Nations. The original purpose of diplomatic immunity is being abused by diplomats and their families in the United States.

Because of the broad coverage of the immunity, Federal, state, county, and local police and the public are frustrated and angry. It is not hard to understand how difficult it is for an officer of the law who, in observing a diplomatic tag issued by the State Department, is not able to order the vehicle to be moved or towed. Even if it is impeding heavy traffic.

How can you expect the Vienna convention, or explain the Vienna convention to women who have been raped or mugged or robbed or nearly killed? And the person involved is not really a diplomat, but a member of his family or an employee.

Justice must be served. We are a nation of laws. We have all been raised in the tradition of equal justice under the law. No one, including the President of the United States, can commit a crime and then not face the consequences of that act.

How can a multirapist identified in New York City by victims not only walk out of the police station laughing, but thwart justice on an international scale? No one should be above the law.

The idea of limiting diplomatic immunity and serious crimes as contained in the legislation before you today would go a long way to solve this dilemma. There are no clear figures to determine daily the violations that take place for several reasons.

First, for those in law enforcement who observe minor crimes and infractions, and the subject turns out to be a person or a vehicle with diplomatic immunity, they simply do not waste their time filling out reports.

Victims do not press charges because the state had no way to prosecute. If indeed we were able to keep track of every incident or offense, it would be in the many thousands. While many are minor infractions, they add to the headache of the lawmen. If the laws were changed to cover serious offenses of the persons who fit into a limited diplomatic category, it would make sense.

First, no one who commits a serious crime of murder, rape or other such felonies involving manslaughter should be exempt from prosecution of our laws.

The purpose of diplomatic immunity is not to open the door to criminals. It is to protect the representatives of foreign states from harassment, and to respect their rights to exchange documents and confidential papers.

It was not intended to allow diplomatic pouches to be used to bring in illegal drugs or funds or weapons. There should be only limited immunity for members of the diplomatic family, and none for those who are employees.

They too should be subject to the prosecution and fines for both serious crimes and infractions of traffic laws. Parking in Washington, DC and in New York and other major cities is a serious problem.

But not for those who the State Department diplomatic issued official tags. Reckless driving and driving while intoxicated are not to be tolerated by anyone. Yet, one just has to drive in these communities to see the arrogance of the lawbreakers who know our hands are tied by the present laws.

You must allow local police in emergencies to tow away vehicles that prevent fire and police vehicles from responding to emergency calls. And to arrest and hold drivers with diplomatic credentials who are a danger to the citizens on our streets and highways while intoxicated.

If diplomatic pouches are being used to bring in drugs, as is indicated a possibility, then those pouches should be impounded by a drug agency and examined by an international committee of diplomats for that purpose. And prosecution should take place.

A few weeks ago we conducted a poll of some 18,000 chiefs of police and 3,000 country sheriffs regarding accepting into international membership any foreign law enforcement officer whose ideology was anti-American.

That is those whose ideology reflects a society where secret police are used for political arrest and torture, for acts against humanity. Ninety-six percent of the American police officers stated that they wanted nothing to do with such foreign officers whose nation is anti-American.

This bill would make it clear that American law enforcement officers are no longer willing to accept the concept of immunity from breaking the law.

This bill would enable us to investigate, arrest, and prosecute those who come to our shores of a Republic and enjoy our freedom and good will, and who then murder, rape, and steal, thinking that they can wave a paper, called the diplomatic immunity, and walk away free.

Our citizens expect us to protect them from any of the 40,000 diplomats that break the laws. We hope you will correct an evil situation that is being abused by the broad coverage of diplomatic immunity.

Let me conclude with my thanks for your allowing me to speak here today. I feel that I represent the general response of our Nation's 600,000 full-time police officers and the millions of Americans we serve.

[The prepared statement of Mr. Martin may be found in the appendix.]

The CHAIRMAN. Thank you very much indeed. I think all of us, not just the panel, but the Senators and the public have a very real sympathy for the misery that the victims of these crimes have suffered.

And I would also concur that American diplomats who are abroad behaving in the same way should be punished as well. There is no question about it. The danger here, as I see it, is in adverse regimes. Trumped-up charges as a retaliatory measure could well come into being.

And when I speak of trumped-up charges, I mean exactly that. I mentioned earlier, I was accused of espionage by the government in Czechoslovakia. Well, that was a trumped-up charge.

But I think we have to bear in mind the plight of our own diplomats abroad. Somehow or other we have to resolve this and I trust that we will. Maybe insurance is one way down the road.

But whatever it is, I am not sure. I wonder if Ms. Roosevelt might care to make another comment or two. Why do you not pass the mike back?

Ms. ROOSEVELT. Just very briefly, Senator, I only want to say one thing. Hearing my fellow citizens whom I respect and feel great compassion for, I understand my obligation as well.

But they perhaps do not realize that I do, from the very beginning, fight for them. I do not win. But I always fight for them. And in some cases that one of the persons here did not mention, I was able to get the embassy involved to pay the claim for financial hardships that the person involved claimed.

And I got the Ambassador and the country involved to pay that claim in full. That is what I tried to do, and I really do always try to help the victim. It took a while.

Mr. GOLDSTEIN. How many years?

Ms. ROOSEVELT. You know how long it takes in a court of law as well for an American victim seeking to be constituted by fellow Americans.

These things are not easy. I only wanted to say that I do not want to leave the impression that I do not care passionately about our own people because I too am an American. And I care very, very much about seeing justices done within the laws.

The CHAIRMAN. That is not the question. I thought you had a comment.

Ms. ROOSEVELT. About the fact that we were able to get compensation, and we do try to, and in this case it was not mentioned.

The CHAIRMAN. Thank you very much indeed.

Senator HELMS. Ms. Roosevelt, would you stay for just a moment. Are you familiar with Mr. Skeen's case?

Ms. ROOSEVELT. Yes.

Senator HELMS. Is he correct that the man who shot him was a repeat offender?

Ms. ROOSEVELT. Let me say this. If I had known about the first offense, he would have been out the first go-round.

As you know, that was about when I became Chief of Protocol. I honestly have looked into the record. I do not know how it happened that the first offense never came to our attention.

But this is one of the things that Mr. Ashman quite rightly says, we need a better reporting system. There is no question about that. That did not come to us until after the fact. Otherwise he would have been out the first go-round, no question.

Mr. ASHMAN. Senator, Ms. Roosevelt is quite correct. Diplomatic immunity was invoked in that first incident without her involvement. What happened happens all the time. The police in the first incident involving the son of the Brazilian Ambassador saw the documentation. You did not send anything over.

Ms. ROOSEVELT. Had I known — and let me tell you that when I did find out about the second event, that guy was out of here so fast it would have made your head swim. But I would certainly have had him out. Mr. Skeen would not have been through this terrible trauma and ordeal had I known on the first go-round.

And that is why it is important, and you are absolutely right, that we be notified immediately of every incident. That we are in total agreement about.

Thank you very much also for making that point.

Senator **Helms**. One more question. And I might say, even retroactively, I think that where there has been a default that something ought to be done for the victims of these crimes.

Ms. **Roosevelt**. I was able to get this gentleman compensation.

Senator **Helms**. Let me just ask you, how you would react to making the Ambassador responsible for the claim of immunity for anybody in connection with him?

Ms. **Roosevelt**. This is something I cannot just answer off the top of my head. I would like to think about it and I would like to get legal advice as well.

Senator **Helms**. I would be perfectly willing for that to be the case overseas and in Iran, which you mentioned several times, or anywhere else. But the buck has got to stop somewhere.

But to allow those bums, those bums who raped that little girl twice—one of them went and got his friend, and then came back. And he claimed diplomatic immunity and he got it.

I do not blame these people and hundreds of others around the country for being upset, and I think you are. I think the message to take back to the State Department is to get off the dime and give you some help trying to get these things straightened out.

Meanwhile, we are going to help you legislatively.

Ms. **Roosevelt**. The thing is that I did get to this gentleman financial compensation, and I worked hard at it. It took a while, but that is what I try to do in any case of terrible behavior like this.

The other thing is, Senator we cannot do anything, also, about somebody who does not bring charges in a serious case or try to pursue them. If they will not testify, if they will not bring charges, what can we do, even if it is a question of diplomatic immunity?

Senator **Helms**. I think Mr. Martin is going to take care of helping to advise police officials all across this country what their duty is.

Ms. **Roosevelt**. Thank you, Senator.

Senator **Helms**. Thank you, ma'am.

The **Chairman**. I have no further questions. Senator Helms.

Senator **Helms**. Mrs. Roosevelt said, in response to a question of mine, that cooks and servants and drivers are not immune from prosecution.

The **Chairman**. Excuse me. I think if Mr. Kozak or one of you would stay.

Senator **Helms**. Now, the point is, and this is a defect in the whole State Department operation down through the years, it may be the theory that these people are not immune, but in practice, Mr. Ashman, is it not a fact that they claim and exercise and get immunity?

Mr. **Ashman**. We received, in response to the freedom of information petition from the team that just left—and I am sure that the two who are remaining can verify—that a homeless gentleman in the Washington, DC, area was killed, was killed by an automobile driven by a chauffeur for the Pakistani Embassy.

Senator **Helms**. That was over in Arlington, was it not?

Mr. **Ashman**. Yes.

Now, I do not understand. The Pakistani Embassy chauffeur, unless they have classified him a a diplomatic agent, is a chauffeur. And he was granted diplomatic immunity.

There was a sexual molestation case involving a security guard. I thank Senator Pell earlier for the plug for the book, but it is in the book, as they say.

I mean, these cases came to us from the police files and from freedom of information and from the victims. And unfortunately, many of these cases are done by people down the ladder.

The fellow who was the serial rapist's father was the lowest ranking attache at Ghana. He did not even make the list at the top. So you have a chauffeur here, a low-ranking attache there.

I think we should clear the air. Under the Vienna convention as it was adopted in this country criminal immunity for violent crimes is not limited to diplomatic agents. The technical and administrative staff have immunity from criminal prosecution, whether it is in official duties or they are on holiday. Their civil liability is limited.

Senator **Helms**. Let us hear from Mr. Kozak.

The **Chairman**. May I interrupt for just one moment. I think that you are incorrect. My understanding is that drivers, gardeners, cooks, and security guards have criminal immunity only for official acts.

Mr. **Ashman**. That is correct. The Pakistani driver who was drunk, they decided he was testing the car to pick up the military attache the next day, and they decided that that was his official duty. But nevertheless he was given immunity, yes, sir.

The **Chairman**. It was our court that ruled that he was performing an official act.

Mr. **Ashman**. That is correct.

Mr. **Kozak**. I think that is the point I wanted to emphasize, Mr. Chairman. In these cases of personnel who have official duty immunity—and that is the support staff of an Embassy, the drivers, cooks, and so on—where their immunity is limited to those cases where they are performing official functions, or consular agents even, they are limited to where they are performing their consular functions, the decision as to whether or not a particular act comes within that is made by our courts, not made by the State Department.

It is not made by fiat. They have to come before the courts and they have to plead that as a defense. And the court, based on all the evidence, makes those decisions. So you know, it is not quite as arbitrary as it comes across.

Senator **Helms**. Well, Mr. Kozak, reductio ad absurdum. Did the State Department do anything in the testimony in this case to assert that this guy could not have been on diplomatic assignment? Did you have any part in the trial?

Mr. **Kozak**. I am not sure, Senator, whether we went in. Our normal practice is not to go in and try to argue facts one way or the other. We say that is an issue for a court, a trier of fact, to make a determination.

Senator HELMS. Well, here is a chauffeur driving a car in Arlington, VA. He runs over and kills a guy, and he is scot-free. I think it is the duty of the State Department to get involved in these things. That is one of the points I am trying to make.

Mr. KOZAK. Senator, we do get involved with the courts in trying to set down what the right principles of law are and so on, in other words to make it clear to the court that official acts immunity applies only to official acts and so on.

But when it comes to resolving a dispute of fact—one person says he was drunk and he says he was not, and somebody said he was speeding and somebody else said he was not—that is exactly the kind of issue that we leave to our courts to decide, whether it is a diplomat or anybody else. And that is the kind of thing we try to avoid getting involved in, making those factual type judgments.

Senator HELMS. Well, on behalf of the victims, I think you had better get involved.

Mr. Chairman, I have no further questions.

The CHAIRMAN. Thank you.

Thank you very much.

Senator HELMS. Let me compliment you, Mr. Martin. May I ask you how old you are? You are the youngest president of a major organization I ever saw.

Mr. MARTIN. Thirty-seven.

The CHAIRMAN. And how many members are in your organization?

Mr. MARTIN. We have 68,000. I travel all over the country. I just got back from New Orleans, and this was the major topic at our police convention there. Officers are concerned, and also in the Chicago area and New York, about this problem.

Walking into this building today, I ran into two of our members who are with the Capitol Hill Police, and they said they were sick and tired of writing tickets for parking violations to the honest, good, American citizens, and they have to walk past all the vehicles that are parked in the middle of the road with the diplomatic tags on.

They are very frustrated on that, as well as the drunk driving that the diplomats are involved in repeatedly, almost on a daily basis.

Senator HELMS. Fine.

Well, Mr. Chairman, I thank all of the witnesses for coming here, including Ms. Roosevelt and Mr. Kozak. I think this has been a very instructive meeting.

But you have one more panel, have you not?

The CHAIRMAN. We have one more panel.

Senator HELMS. Thank you very much.

The CHAIRMAN. Thank you all very much.

The final panel is Mr. Arthur Rovine, former chairman of the American Bar. Could members of the previous panel conduct your conversations outside the room.

Mr. Rovine, who is the former chairman of the American Bar Association Section on International Law and Practice, in New York; and Ms. Pamela Trescott, attorney, from Los Angeles. We appreciate your being with us and we would ask you to limit your testimony, as we asked, to 5 minutes and we will ask questions afterward.

Would Ms. Trescott care to lead off.

STATEMENT OF PAMELA TRESCOTT, ESQ., ATTORNEY-AT-LAW

Ms. TRESCOTT. Mr. Chairman and members of the committee——

The CHAIRMAN. Would you pull the mike closer.

Ms. TRESCOTT. I am Pamela Trescott. I have submitted a written statement and would like to review my points in that statement and then answer any questions you may have.

The CHAIRMAN. The full statement will be inserted in the record as if read.

Ms. TRESCOTT. I am an attorney at law practicing in California and a lecturer on diplomatic immunity. I spent 4 years serving in the International Trade Administration of the U.S. Department of Commerce and was based in Washington, DC, Beijing, and Taiwan.

I researched the legal aspects of the study over 3 years which resulted in the book "Diplomatic Crime." I believe that the vast majority of diplomats and their dependents and staff in the United States are responsible individuals, dedicated to their work, and adhering to high standards of professional and social conduct. I know the same is true of Americans who represent our country abroad.

Unfortunately, their good behavior gives no relief to the victims of violent crimes whose frustration and suffering are comparable to what has been expressed to you here today.

I welcome the opportunity to testify in support of S. 1437, which would close the umbrella and narrow the scope of the diplomatic immunity so as to place the relatives of diplomatic agents and their staff members within the jurisdiction of our laws when violent crimes are committed. I respectfully submit that this bill addresses a serious problem in a responsible manner.

There are occasions when it is particularly difficult to distinguish between the rule of law and practicality. As we celebrate the 200th anniversary of our Constitution, it is difficult to explain exceptions. It is difficult because we have come so far.

But still, we must tell certain victims of violent crime that they may not avail themselves of our legal system. We must tell certain victims of violent crime that this country can offer no assurance that criminals will not be set free to commit other violent crimes, perhaps even victimizing the same person again.

This is not just a loophole in the law, but blatant injustice. This situation is in direct opposition to the fundamentals of fair play, due process and equal protection that we discuss as lawyers, but that all American citizens desperately rely upon.

The Vienna convention is very precise in setting forth the legitimate functions of a diplomatic mission. They are lofty and noble goals. By what twisted logic can anyone classify a serial rapist, a drunken driver, a drug smuggler, or any other felon as serving the enumerated goals of a mission in this United States from which that functional immunity arises?

The Vienna convention and the numerous articles that have interpreted that treaty repeat consistently that it is the work, rather than the official, which must be protected. It must also then be noted that it was the intention of the Vienna convention that such officials obey all ordinary laws concerning their private actions.

Violent crimes are the ultimate private actions. The son of an Ambassador shooting an innocent citizen in this city is not acting in self-defense arising out of some diplomatic function. It is an uncivilized and unacceptable breach of our ordinary laws and must be punishable by law. The same is true of the other violent crimes reported to you today.

The proposed legislation would supersede these treaty-based immunities for a narrow spectrum of universally recognized serious crimes.

Clearly, the Congress of the United States has the constitutional right to pass crime on that may be inconsistent with treaty obligations of the United States. Frankly, I think there is a strong argument that the bill before you may not be inconsistent with the Vienna convention. As previously stated, the concept of diplomatic immunity in that treaty is so clearly linked to function and the mandate of behavior so well established that punishment for a violent crime may indeed be an enforcement of the Vienna convention.

It should be noted that since 1884 the Supreme Court has held that "so far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification, or repeal."

This constitutional standard has been repeatedly reaffirmed in several cases. The Vienna convention provides for disputes among signatory nations over interpretation of its mandates. The United States should be prepared to enter into arbitration, not to retreat from the position set forth in the bill before you, but to urge greater adherence to the principles of the Vienna convention as set forth by representatives of the signatory nations.

Certainly there would be political reaction to the enactment of this bill. Hopefully, responsible nations concerned with the wellbeing of their own citizens would join us in legislating comparable exceptions to diplomatic immunity.

The international repercussions created by enactment of S. 1437 would be modest. The President would retain his constitutional prerogative to determine whether to prosecute members of foreign missions subject to U.S. criminal laws in light of all the circumstances.

Nothing in this bill would emasculate the President constitutional power of pardon. Commutation could be motivated by foreign policy considerations. In other words, there can be negotiations, political give and take, and even swaps where necessary.

It has been suggested by a distinguished fellow of the Heritage Foundation that this bill be amended so as to transfer to the Federal courts jurisdiction over all crimes of violence committed by the class of individuals described in the bill.

It has been suggested that by federalizing these crimes this bill would safeguard the executive branch's voice in dealing with Vienna convention signatory nations politically when and if a crime occurs.

This proposal is not unlike the federalization of crimes that would otherwise be violations of State laws when the victims fall into a particular category, such as Federal officals. I join in urging the committee to seriously consider this proposed amendment.

We learned the hard way that capitulation to terrorism, blackmail, and extortion can get us. If we are to deny further due process because we fear potential future acts against us, we will have capitulated to the point of no return.

Finally, we must address the concern that American diplomats are often stationed in nations whose legal systems are so alien to our own that to waive diplomatic immunity would subject them to kangaroo courts and physical cruelty. In those countries where drunkenness may be penalized by flogging or where adultery may be penalized by stoning, we should by treaty establish clear procedures for actions to be taken in this country comparable to those courts martial that have been held when American servicemen serving in our missions abroad commit unlawful acts.

It is natural to expect that after this legislation is approved, other nations will enact laws bringing the dependents and staff of American diplomats under their criminal jurisdiction for violent crimes. Frankly, this should not create a problem for American diplomacy since in most instances American officials and those traveling abroad with them are very well-behaved.

Where a violent crime is committed in a country with a legal system not totally incompatible with our own, it would be appropriate to allow the American involved to stand trial and face potential punishment.

As to those nations that may enact laws exposing Americans to legal procedures and levels of punishment totally incompatible with American justice, there is the option of a bilateral agreement providing for each nation to try and punish its own citizens. It is our position that nothing in the Vienna convention would prohibit such bilateral agreements.

We believe that the bill before you is effective. We believe it is the most appropriate first step in bringing the concept of diplomatic immunity down from a pedestal in the sky to the real world. We support the bill on constitutional grounds and as a moral imperative.

At the same time, we would urge this committee to use the full weight of its influence to guide the State Department into negotiations at the United Nations designed to bring about international consistency with this approach to diplomatic crime.

On behalf of all diplomatic crime victims, those not before you today as well as those whose testimony we have just heard, we urge you to support this legislation and give American citizens the protections we all deserve.

Thank you.

[The prepared statement of Ms. Trescott may be found in the appendix.]

The CHAIRMAN. Thank you very much, Ms. Trescott.

Mr. Rovine.

STATEMENT OF ARTHUR ROVINE, ESQ., FORMER CHAIRMAN OF THE AMERICAN BAR ASSOCIATION'S SECTION ON INTERNATIONAL LAW AND PRACTICE

Mr. ROVIVNE. Thank you, Mr. Chairman. It is an honor to testify before you today on the subject of diplomatic immunity.

I am a partner in the international law firm of Baker & McKenzie in New York City, and the immediate past chairman of the International Law Section of the ABA. I served in the State Department for 11 years, including 6 as Assistant Legal Adviser for Treaty Affairs and 2 years as the first U.S. agent to the Iran-U.S. Claims Tribunal in The Hague.

I speak to you today in my private capacity. I am familiar with the way, however, in which the rules of diplomatic immunity are established and the nature of those rules as the basic underpinning of diplomatic relationships throughout the world.

I need not describe S. 1437. That has been done adequately today, and I will just go on to comment on it.

Regretfully, Mr. Chairman, I cannot support the bill, primarily because, if enacted into law, it would put American members of diplomatic missions and consular posts overseas at serious risk and would substantially weaken the long accepted reciprocity rules which constitute the foundation of all diplomatic relationships.

The bill in my judgment is not consistent with the national interest of the United States. But I recognize the serious problems which the bill addresses, and I have no doubt that significant steps must be taken to diminish the abuses of the immunity rules which have been perpetrated by members of diplomatic and consular missions in the United States.

In my judgment, though, Mr. Chairman, significant changes in criminal jurisdiction rules can be made only with the agreement of other countries, at least bilaterally in some instances, and most desirably on a worldwide scale. I say this knowing in advance that agreements substantially changing the rules of criminal jurisdiction are not likely to be forthcoming.

But the one approach we cannot afford, in my view, is a unilateral change in the internationally accepted and binding rules on criminal jurisdiction. This is not just a matter of abstract moralism or compliance with rules of international law binding on the United States through custom and treaty. It is a matter of reciprocity in an area in which we have very little choice and only the narrowest range of options.

It is very important to understand, as we have from the time of the Founding Fathers, that reciprocity lies at the heart of diplomatic immunity. Like all states, we receive diplomats from other countries and we send diplomats to other countries. And the officials we send are absolutely at the mercy of foreign governments, many of whom will not hesitate to apply their criminal law and their criminal procedures to our representatives if we apply our criminal law and procedures to theirs.

If we do that and do it in a way which is beyond the agreed limits of the Vienna conventions, then foreign governments can and will do the same, and the results in my judgment will be intolerable for us and for the international system.

As we know all too well, many foreign nations, perhaps most, have criminal law standards which are far different from ours, and many apply systems of punishment that we find unacceptable in this country even if the charge, the criminal charge, would have been appropriate under our law. Many countries, perhaps most, will only be too happy to deal more harshly with our people than we deal with even the violently criminal of theirs.

This is not just a matter of trumped-up charges, although it is that, too. Some governments will bring trumped-up criminal charges against our people. We have very good reason to worry about specific governments in this regard, including those of the Soviet Union and Eastern Europe.

Senator Specter earlier today suggested that we "take our chances." But with all respect, I do not think that is good enough.

Out of some 150 countries in this world, only about 25 are democracies that share our values and have criminal justice systems that we would find acceptable. To take our chances with the vast majority of unacceptable criminal justice systems is simply not workable.

The victims—and we have heard eloquent testimony from the many victims today—the victims will also be U.S. Government representatives and the diplomatic relationships of the United States.

I regret that, while there has been a victims panel here today, there has not been a U.S. Foreign Service officer panel at this hearing. They too could have given eloquent testimony about their possibilities of being victims.

Now, under the current law a diplomatic agent and the members of the family of the diplomatic agent forming part of his household are not subject to the criminal jurisdiction of the United States, and neither are members of the administrative and technical staffs of the mission, together with members of their families forming part of their respective households.

But members of the service staff of the mission enjoy immunity only in respect of acts performed in the course of their official duties. Otherwise, they are subject to criminal jurisdiction. And certainly, private servants are also subject to criminal jurisdiction.

Similarly, the law governing immunity with respect to consular officers requires that they not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by a competent judicial authority. And beyond that rule, consular employees, as distinct from officers, are immune from arrest, detention, and criminal process only in respect of acts or omissions in the exercise of their official functions.

Now, given that law, is there anything more to be done unilaterally without violating that law, and is there more to be done on an international and agreed upon basis? It is clear, Mr. Chairman, that some further steps could be taken when crimes have been committed for which there is immunity.

We can use the procedure of persona non grata more frequently than we do. That means expulsion and it means no return, and that is an effective way of preventing the criminal from committing crimes in this country again.

We can certainly—I hope we will—keep a closer watch to ensure that those diplomatic and consular personnel expelled from the United States for criminal law violations do not return under some other guise, but that they are tried under our criminal laws if they do return.

We can more frequently ask foreign countries to waive the immunity of their diplomatic personnel. Waivers, I must say, are not easy to come by, but pressure from the Government may induce some foreign missions to waive immunity. They are difficult because the Government, our Government, is itself reluctant to waive the immunity of its officials overseas. But again, reciprocity is the key.

If we will not waive immunity, they will not waive. It may be possible to work out bilateral waiver agreements with certain countries.

Greater publicity may also help deter crime, because it creates embarrassment for the sending government. We tend to play down or keep quiet about crimes by diplomats, but publicity may have a desirable effect, even at the price of increased publicity abroad about any transgressions by our representatives.

And since the diplomatic pouch is sometimes used to bring weapons into a country, we might consider an agreed upon electronic scan of the pouch.

I appreciate the general governmental resistance to that idea, even on the part of our own Government, but perhaps the idea could be considered anew.

We can certainly maintain rigorously our program of suspending or ending driving privileges for those diplomatic and consular personnel who repeatedly violate traffic laws and regulations.

We can and certainly should consider a system of victim compensation, including compulsory insurance.

It is possible in theory, of course, to negotiate bilateral agreements with governments to change or narrow the scope of immunity. That can be done within the framework of a multilateral agreement, and it is possible to renegotiate the Vienna convention to adopt further restrictions. But I would not put too much hope on either of those possibilities.

Governments are most unlikely to agree on the elimination of full criminal immunity for all family members of diplomats and of administrative and technical staff. They are unlikely to agree to the kinds of restrictions internationally that are found in the bill before us today.

And they will continue if we adopt such a law to press even to the point of trumped-up charges or the application of criminal law or punishment that we would find appalling in this country.

My full statement is on the record, Mr. Chairman.

The CHAIRMAN. Your full statement will be inserted in the record.

Mr. ROVIVNE. I will not repeat it all. I wanted to make one final set of points, however.

And that is I had thought until today that even those who felt most strongly about the need for a change in the law appeared to support the proposition that changes cannot be accomplished unilaterally.

The well-known book, "Diplomatic Crime," by Ashman and Trescott, states flatly, and I quote from page 18, "There is no unilateral remedy. One country's concept of diplomatic immunity may not be another's."

I quite agree. Apparently their position has changed from the position they took in the book. But I certainly agree with that statement in the book.

The work refers repeatedly to a need for changes in the Vienna convention itself. Indeed, they even call on page 348 for a new Vienna convention. Not for unilateral measures.

[The prepared statement of Mr. Rovine may be found in the appendix.]

The CHAIRMAN. Thank you very much, indeed, for your statement.

I have a couple of specific questions for Mr. Rovine. One is, in the case where a diplomat has been declared persona non grata, thrown out of the United States, and resurfaces 5 years later accredited to the United Nations, would we not be obliged to take him in under the headquarters agreement?

Mr. ROVIVNE. This is one of the areas in which I said I thought, in my full statement for the record that I did not read here, that I thought could be the subject of agreement.

That is to say, once a diplomatic or consular employee or official is expelled from the country, the other country would agree not to send him back on any kind of diplomatic assignment whatsoever.

The CHAIRMAN. They could agree. But what does the present law say?

Mr. ROVIVNE. I think under the current law it could be done. I would hope that we would take every effort to keep that person out.

The CHAIRMAN. That is what I thought. I do not think the general public is aware of that, that somebody could be pushed back in.

You brought up the book, "Diplomatic Crime." I think they should, thanks to this hearing, maybe do quite a lot better, because we have had both authors here with us. I have no further questions for the moment. Senator Helms?

Senator HELMS. Mr. Chairman, I think that I shall submit mine in writing, in the interests of time.

But Ms. Trescott, I admire excellent testimony, whether it is for me or against me. And I must say that your prepared statement here is not only sound from my point of view, but it is so well prepared, I just wanted to pay my respect to you.

Ms. TRESCOTT. Thank you, Senator.

Senator HELMS. I was noticing here, and this is just one of many statements that she made, Mr. Chairman.

> We learn the hard way what capitulation, terrorism, blackmail, and extortion can get us. If we are to deny further due process because we fear potential future acts against us, we will have capitulated to a point of no return.

Well said.

Ms. TRESCOTT. Thank you.

Senator HELMS. Now, Mr. Chairman, may I indulge on you for just thing. It will not take but a couple of minutes.

I understand that Mr. Ronald Sol Mlotek, who is the Chief Legal Counsel of the Office of Foreign Missions, the U.S. Department of State, is in the audience. And it may be that you would not mind letting him come forward to let us ask him how, briefly, how he feels about this.

The CHAIRMAN. Before doing that, I have one further question. And that is, what thoughts you have about setting up some kind of insurance fund?

It would not resolve the criminal actions. But it would at least make the plight of the victim a bit better. Do you think that might be feasible? What would be your reaction?

Mr. ROVIVNE. Yes. That was one of the items, Mr. Chairman, that I said I thought should be seriously considered. A victims compensation fund and compulsory insurance.

The CHAIRMAN. Thank you. Ms. Trescott.

Ms. TRESCOTT. Either a victims compensation fund funded by taxpayer dollars, or a mandatory insurance policy for diplomats and their relatives and other service staff would be feasible, and it would work.

The CHAIRMAN. We could require that from the countries concerned as part of a condition of their accreditation.

Ms. TRESCOTT. I would hope this could be accomplished.

The CHAIRMAN. Thank you very much.

Senator HELMS. How do you feel about the suggestion that only the Ambassador or the consul could invoke diplomatic immunity for himself or anybody in his family or his staff?

Ms. TRESCOTT. I personally feel that a restriction of diplomatic immunity to the persons it was originally meant for is a very good idea.

We have such a proliferation of people in this country that are immune that the statistics will show you that this is becoming a minor crimewave. It is getting out of control.

If we can control the numbers of persons who have full diplomatic immunity, we can better control this problem.

Senator HELMS. But if you had the buck stops here with the Ambassador or the consul——

Ms. TRESCOTT. For full diplomatic immunity? Personally, I think it is a great idea.

Senator HELMS. I was hoping you might say that. You do not think it is such a hot idea, do you?

Ms. TRESCOTT. You could also give immunity to others, just for the scope of their official acts only and no further, so that they could be protected within their legitimate function.

Mr. ROVIVNE. I think if we had a system of criminal justice throughout the world, not just in two dozen democracies, systems of criminal justice that were like ours, I would feel much better about your proposal, Senator.

But given what we have got in this world, I think it would pose a very serious risk to the personnel we send overseas, including our military, including our Foreign Service officers, including the many thousands who represent this Government.

I doubt very much that they would want to become the kinds of victims that we have heard here today.

The CHAIRMAN. Thank you very much indeed, Ms. Trescott, Mr. Rovine. Now, Mr. Mlotek.

Senator **Helms**. I do not even know whether you wish or are willing to testify. But I was just told you were in the audience, and I am curious about how you feel about the legislation.

We have not met. Have we?

Mr. Mlotek. No, Senator. I am sorry. We have not. The loss is mine, I assure you.

Senator **Helms**. Well, whatever you say was not prearranged.

Mr. Mlotek. May it please this honorable committee, I am Ronald Mlotek. I am the Chief Counsel of the Office of Foreign Missions.

And I am here at your disposal to answer any questions you may have of about our programs, particularly as they relate to the automobile part of our program, vehicular matters and vehicular misconduct by foreign diplomats who are guests in this country. In this regard, I have no prepared statement, I should say, because I was not expecting to be called upon.

I would simply take one or two moments to clarify or correct some of the things that Sheriff Martin mentioned about automobile matters that rankle the membership of his constituency, the police organizations, in the nature of abuses of diplomatic immunity.

The Office of Foreign Missions for a period now of over 3 years has been in the process of implementing an exceedingly tough, and I emphasize the words "exceedingly tough," system of sanctions against vehicular misconduct by diplomats.

And I would also emphasize that this system of sanctions is probably tougher than the system of vehicular enforcement mechanisms that exist in your own State, Senator.

For example, in our system, in the Office of Foreign Mission system, a diplomat will drive while intoxicated exactly one time. He will not, or she will not, drive again.

The policy of our office as administered by Ambassador Nolan is that a diplomat who drives while intoxicated automatically loses driving privileges in the United States for the remainder of the time that they are in the United States.

Senator **Helms**. He gets eight points, in other words.

Mr. Mlotek. It is an automatic eight-pointer. We use the system, we collaborated very closely with the State governments on implementing a system, most specifically, with the American Association of Motor Vehicle Administrators.

And they told us that almost every State within the country uses an eight point system, where there are points assessed on the basis of the severity of the infraction. And we automatically assess the full eight points for driving while intoxicated.

Now, although the system is borrowed from the States, the way we implement it is much tougher than the States implement it. Because in the States you will not automatically on a first offense, particularly as we all know, in most cases, you will not lose your driving privileges for any great length of time.

And if you are a diplomat who has just come to this country for a period of 3 or 4 years, and you are foolish or stupid enough to have driven while intoxicated, and you are caught at it, irrespective of personal injury, in other words, even if there is no accident involved, we will revoke driving privileges, automatically. Now that is much tougher than the States.

Similarly, our system is tougher in the sense that we also assess points for unpaid parking tickets. And I am informed by the District of Columbia authorities that the incidents of unpaid parking tickets by diplomats has dropped precipitously in the last few years.

Now, it still has a way to go and we are still going to be very zealous in enforcing our prohibition. But we are concentrating first on those areas of vehicular misconduct that would result in personal injury.

I would also mention, to correct what Officer or Sheriff Martin stated about diplomatic vehicles that are parked in fire lanes, or parked in other places where they are impeding traffic or imperiling public safety.

Those vehicles most certainly can be towed and they should be towed. And we stand ready to advise local law enforcement organizations at any time. We have published booklets and pamphlets on these matters.

Our telephone numbers are pretty well publicized. So, law enforcement officers, particularly in these jurisdictions where diplomats are concentrated, should know that they can tow those vehicles away and tow them to an impoundment lot or to any place where their safekeeping can be assured.

Senator HELMS. Well, I think all of that is fine, Mr. Chairman. And I agree with it. And I am glad you came up.

I think what may be needed in this one small area of what I am talking about, by the way, did anybody tell you not to talk about anything else?

Mr. Mlotek. No one, Senator, told me not to talk about, I have come here as every——

Senator HELMS. Well, they said you talk only about so and so. Right?

Mr. Mlotek. I came here with a mandate and an authorization to speak about certain matters.

Senator HELMS. I think at a minimum right now that there ought to be a concerted action to cooperate and encourage police departments, law enforcement agencies across this country to understand exactly what is their duty, what is their prerogative.

And I do not know whether Mr. Martin misstated or not. But certainly was giving the view of police officers and police officials with whom I have talked about this. So I am glad to hear you say that you are willing to work with them and I think that will be productive.

Mr. Chairman, I thank you very much.

The CHAIRMAN. I have one question I would like to address to you as a representative of the Office of Foreign Missions——

Mr. Mlotek. Yes, we were established by an act of Congress.

The CHAIRMAN. Right. Is there any reason why you could not just by internal memorandum require of any foreign nation coming to America, diplomats coming here, that that mission carry some kind of insurance policy providing for victims?

Mr. Mlotek. Well, Mr. Chairman, by law all diplomats and members of their dependents who drive in this country have to carry insurance. That is by congressional statute.

The **Chairman**. I am not just talking about driving. I am talking more generally.

Mr. Mlotek. For any acts. Yes. I know that over in the other chamber, I think we are supposed to refer to it, some legislation has been talked about that would require such insurance.

Let me just point out that my office has become quite expert in the areas of insurance because of the motor vehicle insurance that we have been involved in, and we do know something about the industry.

I cannot believe that you would be able anywhere to find an insurance carrier who would write such insurance. As you know, Mr. Chairman, you or I could not go out and get any insurance coverage for own intentional torts.

Now, we can get insurance coverage for our acts and omissions, for negligence, as we lawyers term it. But you cannot go out and get an insurance company from anyone, perhaps not even Lloyd's of London, that will cover you for an intentional tort.

If I punch someone in the nose intentionally, what insurance company is going to write a policy of coverage on that?

Now, if added to that, the people who are doing the punching are entitled to diplomatic immunity and you cannot compel them to testify and to cooperate in their defense, where would you possible get such insurance, unless Congress set about to create some sort of insurance pool or compensation pool?

Now that might be something worth looking at. I do not know. We are still looking at it ourselves in the State Department. We do not have an official view on it. But I can assure you out in the private sector you would not be able to obtain such liability insurance for intentional torts.

The **Chairman**. I appreciate your thoughts. I do see the pitfalls that we would face. This has been a very good and instructive hearing. And I thank the ranking member for having suggested it. The hearing is adjourned.

[Whereupon, at 12:38 p.m., the hearing was adjourned.]

APPENDIX

STATEMENT

to the
Committee on Foreign Relations
of the
United States Senate
August 3, 1987

Statement made by "Judy" (mother of sixteen year old victim of rape perpetrated by the son of a Saudi Arabian diplomat and the son of a World Bank official, on January 29, 1983) at the request of Senator Jesse Helms concerning S. 1437.

Background

ON JANUARY 28, 1983, MY HUSBAND "JOE" AND I DECIDED TO TAKE A MUCH-NEEDED WEEKEND TOGETHER TO CELEBRATE OUR 21st ANNIVERSARY. WE BOOKED A ROOM AT A LOCAL HOTEL, AND PLACED THOSE CHILDREN NOT IN COLLEGE WITH NEIGHBORS. OUR DAUGHTER, WHOM WE SHALL CALL "HOLLY", WAS STAYING WITH A COUPLE ACROSS THE STREET FROM OUR HOME. DURING THE DAYLIGHT HOURS, SHE WAS PERMITTED TO COME INTO OUR HOME TO USE THE TELPHONE, TO STUDY, TO DO HER LAUNDRY, ETC. ONE OF THE PHONE CALLS SHE RECEIVED DURING THE AFTERNOON ON SATURDAY, JANUARY 29, WAS FROM TWO STUDENTS WHOM SHE HAD MET AT SCHOOL, ONE A SAUDI ARABIAN AND ONE AN EGYPTIAN. HOLLY, A LEARNING DISABLED STUDENT, MET A NUMBER OF FOREIGN STUDENTS WHO CAME THROUGH THE SPECIAL EDUCATION DEPARTMENT FOR ASSISTANCE WITH ENGLISH AS A SECOND LANGUAGE, AND SHE SHARED STUDY HALLS WITH THESE TWO STUDENTS WHO CALLED HER.

THE BOYS HAD CALLED TO INVITE HOLLY TO A PARTY AT THE CONDOMINIUM COMPLEX WHERE THEY LIVED. SHE KNEW AND FELT SHE COULD TRUST THESE FELLOW

STUDENTS -- SHE CONSIDERED THEM FRIENDS. THEY DESCRIBED A PARTY, ASSURING HER THERE WOULD BE 30 - 40 PEOPLE PRESENT. ALTHOUGH WE WERE NOT AVAILABLE FOR HER TO OBTAIN SPECIFIC PERMISSION, SHE ALREADY HAD OUR NEIGHBORS' PERMISSION TO ATTEND A BIRTHDAY PARTY THAT NIGHT, AND SHE CHOSE TO ACCEPT THIS OTHER PARTY INVITATION IN ITS PLACE.

WHEN THE TWO BOYS CAME TO PICK HER UP, THEY WERE IN A CAR BELONGING TO THE FATHER OF THE SAUDI ARABIAN BOY. IT BORE DIPLOMATIC PLATES (#5023 VA). OUR NEIGHBORS NOTICED HOLLY DRIVE AWAY IN A LARGE IMPRESSIVE CAR AND REALIZED SHE HAD NOT TOLD THEM OF HER CHANGE IN PLANS.

UPON ARRIVAL AT THE CONDOMINIUM COMPLEX, HOLLY BECAME THOROUGHLY CONFUSED, LOSING HER BEARINGS AS THEY DROVE THROUGH A MAZE OF CURVED DRIVES AND MULTIPLE HIGH-RISE BUILDINGS WITHIN THE SECURED COMPOUND OF GARDENS AND RESORT-LIKE FACILITIES. AT LAST THEY ENTERED UNDERGROUND PARKING AT ONE OF THE BUILDINGS AND ESCORTED HOLLY UPSTAIRS BY ELEVATOR TO ONE OF SEVERAL UNITS OWNED OR RENTED BY THE SAUDI ARABIAN DIPLOMAT FOR HIS FAMILY.

ON ENTERING THE RESIDENCE, HOLLY INITIALLY FOUND HERSELF AT A LARGE PARTY OF YOUNG PEOPLE, OF WHOM SHE WAS THE YOUNGEST, AS IT SOON BECAME APPARENT WHEN MOST OF THE GUESTS DECIDED TO GO TO GEORGETOWN TO "PARTY" AND HOLLY WAS TOO YOUNG TO ACCOMPANY THEM. SHE WAS LEFT BEHIND WITH HER TWO ESCORTS AND ANOTHER COUPLE. THE OTHER COUPLE LEFT BEFORE LONG, LEAVING HOLLY IN THE AWKWARD SITUATION OF BEING ALONE IN THE BOYS' APARTMENT, DEPENDENT ON THEM FOR A RIDE HOME SINCE SHE WAS UNSURE WHERE SHE WAS OR HOW TO LEAVE ALONE EITHER GRACEFULLY OR SAFELY.

The Rape

THE TWO YOUNG MEN HAD ALREADY SUGGESTED A "STRIP" GAME, WHICH CAUSED THE ONE REMAINING COUPLE TO DEPART. ONCE THEY HAD HOLLY ALONE, THEY WERE QUICK TO TAKE ADVANTAGE OF HER BUILDING FEAR, INTIMIDATING HER BY BOASTING

THAT THEY COULD DO ANYTHING THEY WANTED TO HER BECAUSE THEY HAD DIPLOMATIC IMMUNITY. THEY PRESSED LIQUOR ON HER, AND AFTER PROTESTING, SHE EVENTUALLY ACQUIESCED, HOPING IF SHE COOPERATED THEY WOULD STOP THEIR THREATENING MANNER. INSTEAD, THEY BEGAN TO DISROBE AND DEMANDED SHE JOIN THEIR "GAME". DIZZY AND DISORIENTED FROM THE LIQUOR TO WHICH SHE WAS UNACCUSTOMED, HOLLY WAS EASILY SUBDUED AS THEY FORCED HER TO THE FLOOR, ONE HOLDING HER DOWN WHILE THE OTHER REMOVED THE CLOTHING FROM HER LOWER BODY. THE SAUDI ARABIAN THEN FORCIBLY HAD INTERCOURSE WITH HER WHILE THE EGYPTIAN RESTRAINED HER, BOTH TAUNTING HER WITH THEIR DIPLOMATIC IMMUNITY AND HER POWERLESSNESS THROUGHOUT THE ASSAULT. THE SAUDI ARABIAN THEN RESTRAINED HER WHILE THE EGYPTIAN TOOK HIS TURN, RAPING HER A SECOND TIME AND AGAIN TAUNTING HER VERBALLY WITH THEIR IMMUNITY.

SICK AND FRIGHTENED, HOLLY WAS ALLOWED TO CLEAN HERSELF AND DRESS. SHE WAS THEN MADE TO WALK WITH HER TORMENTORS THROUGH THE RECREATIONAL AREAS OF THE CONDOMINIUM COMPLEX BEFORE THEY TOOK HER BACK TO THE CAR AND DROVE HER TO THE NEIGHBOR'S HOME WHERE SHE WAS STAYING. WHEN THEY LEFT HER THERE, ARRIVING BEFORE HER 11:30 P.M. CURFEW, HOLLY WAS TOO CONFUSED AND EMBARRASSED TO TELL HER NEIGHBORS WHAT HAD HAPPENED.

INDEED, WHEN HER PARENTS RETURNED THE DAY AFTER THE CRIME, HOLLY HAD BECOME RELUCTANT TO TELL EVEN THEM, FEELING SHE SHOULD NOT HAVE ACCEPTED THE INVITATION TO BEGIN WITH AND BLAMING HERSELF FOR GETTING INTO A SITUATION SHE COULDN'T HANDLE.

The Aftermath

WHEN HOLLY WENT TO SCHOOL THAT MONDAY MORNING, SHE FOUND THAT HER LOCKER HAD BEEN VANDALIZED WITH OBSCENITIES IN PAINT. BY THE END OF THE DAY, IT SEEMED AS IF THE WHOLE STUDENT BODY HAD HEARD THE STORY -- THE TWO PERPETRATORS HAD BEEN BOASTING THROUGHOUT THE SCHOOL THAT THEY HAD COMMITTED

THIS CRIME AND THAT THEY COULD NOT BE "TOUCHED" BECAUSE OF DIPLOMATIC IMMUNITY. OTHER BOYS, WHOSE FATHERS' POSITIONS IN VARIOUS EMBASSIES GAVE THEM SIMILAR PROTECTION FROM THE LAW, HAD BEGUN TO APPROACH HOLLY AND TELL HER THAT THEY HAD HEARD SHE WAS A "GOOD DATE" AND WANTED TO GO OUT WITH HER.

ON TUESDAY, SHE FOUND OBSCENE NOTES HAD BEEN SLIPPED THROUGH THE LOUVERS ON HER LOCKER, AND ONE OF THE YOUNG MEN WHO HAD RAPED HER CALLED HER THAT EVENING TO ASK HER TO ANOTHER PARTY, "LIKE LAST WEEKEND". HE INDICATED THERE WERE OTHERS WHO WANTED TO MEET HER BECAUSE OF THEIR DATE.

HOLLY'S TERROR NOW BECAME ~~UNMANAGEABLE~~. HER FATHER AND I HAD REALIZED SOMETHING WAS WRONG BUT HOPED SHE WOULD COME TO US, TO TALK, AS SHE WOULD NORMALLY HAVE DONE. ON TUESDAY EVENING SHE CAME DOWNSTAIRS AFTER THE TELEPHONE CALL FROM THE RAPIST, AND COLLAPSED IN MY ARMS IN TEARS AND A RUSH OF WORDS. GRADUALLY THE ENTIRE STORY CAME OUT. AS I HELD THIS FRAGILE, 5' 2" CHILD WHO HAD JUST DAYS EARLIER TURNED SIXTEEN, I FEARED THERE WAS NOTHING I COULD DO TO KEEP HER FROM SHATTERING EMOTIONALLY.

OUR FIRST ACTION AFTER THE IMMEDIATE ATTEMPT TO PROVIDE COMFORT AND SUPPORT WAS TO TAKE HOLLY TO A PHYSICIAN AND A PSYCHIATRIST. WE ALSO CONSULTED AN ATTORNEY AND ULTIMATELY FILED A REPORT WITH THE POLICE. BOTH THE LAWYER AND THE POLICE ADVISED US THAT HOLLY'S TERROR OF HER ATTACKERS AND THEIR WIDE NETWORK OF FOREIGN DIPLOMATIC FRIENDS WOULD MAKE IT VERY DIFFICULT FOR HER TO TESTIFY, IF NOT BEING TRAUMATIC FOR HER. THE POLICE ALSO MADE IT CLEAR TO US THAT WE COULD PREFER CHARGES BUT THAT IT WOULD BE USELESS TO PUT HOLLY THROUGH THAT SINCE THE SON OF THE WORLD BANK OFFICIAL HAD FLED THE COUNTRY AND THE SON OF THE DIPLOMAT HAD TOTAL IMMUNITY AND COULD NOT BE PROSECUTED.

The Challenge

WE FOUND OURSELVES FACED WITH REAL DANGER TO OUR DAUGHTER AND A REAL POWERLESSNESS TO PROTECT HER IF THE POLICE WERE HELPLESS TO TAKE ACTION IN THIS CRIME. THE SCHOOL ADMINISTRATION WAS SUPPORTIVE BUT COULD ONLY BE CERTAIN OF PROVIDING PROTECTION WHILE HOLLY WAS PHYSICALLY ON THE SCHOOL GROUNDS. THEY COULD NOT EXPEL THE BOY, NOR EVEN REMOVE HIM FROM HOLLY'S STUDY HALL. FINALLY THE TEACHER GAVE UP HER OFFICE FOR HOLLY'S EXCLUSIVE USE DURING CLASSES. THE SCHOOL COULD ONLY SUGGEST THAT, BECAUSE THEY WERE POWERLESS TO TAKE SIGNIFICANT ACTION, WE SHOULD CONSIDER PLACING HOLLY IN A PRIVATE SCHOOL. WE CONTEMPLATED SUCH ACTION, BUT WITH THE ADVICE OF OUR DAUGHTER'S PSYCHIATRIST AND WITH OUR SUPPORT, HOLLY ELECTED NOT TO BE FORCED TO LEAVE HER OWN SCHOOL BY A FOREIGNER WHO HAD PERPETRATED A CRIME AGAINST HER.

THROUGH FRIENDS, WE WERE AT LAST ABLE TO MAKE CONTACT WITH THE STATE DEPARTMENT. WE PROVIDED OUR NOTARIZED STATEMENT, POLICE REPORT, AND PHYSICIAN'S REPORT TO THE OFFICE OF PROTOCOL TO ENLIST THEIR HELP. IN LATE MARCH, THEY CONTACTED THE SAUDI ARABIAN EMBASSY ON OUR BEHALF, AND THE EMBASSY REPORTED THAT THE RAPIST'S DIPLOMAT FATHER HAD VOLUNTARILY SENT HIS SON OUT OF THE COUNTRY. WE STILL HAD SOME CONCERN ABOUT POSSIBLE RETRIBUTION BY THE BOY'S FRIENDS, BUT WE WERE VASTLY RELIEVED.

UNTIL, THAT IS, WE WERE CONTACTED BY THE STATE DEPARTMENT, INFORMING US THAT THE DIPLOMAT WAS TERMINALLY ILL AND THAT, ALTHOUGH THE RAPIST HAD LEFT THE COUNTRY, THE PARENTS WISHED HIM TO RETURN TO FINISH HIS SENIOR YEAR OF HIGH SCHOOL, SEE HIS FATHER, AND PROVIDE SUPPORT FOR HIS MOTHER. THE STATE DEPARTMENT INSISTED THE DECISION WAS UP TO US, BUT SAID THE SAUDI ARABIAN EMBASSY HAD PROMISED THE RAPIST WOULD NEVER ENTER THE STATE OF VIRGINIA IF WE WOULD AGREE. WE FELT THAT HOWEVER WELL-INTENTIONED THE REQUEST, OUR DAUGHTER'S SAFETY WAS OUR RESPONSIBILITY AND THAT GIVEN THE RAPIST'S NETWORK OF FRIENDS, THE CONTINUING RESIDENCY OF HIS BROTHERS AND FAMILY IN VIRGINIA, AND THE EXTREME DIFFICULTY OF PREVENTING HIM FROM CROSSING STATE LINES, WE WOULD BE POWERLESS TO SAFEGUARD OUR DAUGHTER SHOULD HE RETURN TO THIS COUNTRY AT ALL. WE THEREFORE DENIED THE REQUEST AND WERE THEREFORE ABLE TO ENJOY A FAIRLY PEACEFUL SUMMER.

THE YOUNG MAN'S FATHER DIED IN A BALTIMORE HOSPITAL EARLY IN THE FALL. IN NOVEMBER, OUR DAUGHTER WAS HORRIFIED TO SEE HER ATTACKER FACE TO FACE IN A FAST FOOD ESTABLISHMENT WHERE SHE WORKED. HER TERROR WAS SO GREAT THAT SHE QUIT HER JOB ON THE SPOT AND FLED TO OUR HOME. INCREDULOUS, HER BROTHER PERSUADED HER TO RETURN WITH HIM TO THE RESTAURANT FOR HIM TO CONFIRM THE IDENTITY. THEY BOTH SAW HIM, AS HE WAS STILL THERE, AND IDENTIFIED HIM.

WE CONTACTED THE STATE DEPARTMENT, WHO PROTESTED TO THE SAUDI ARABIAN EMBASSY. THE EMBASSY RESPONDED THAT THE BOY IN QUESTION HAD LEFT AND WAS CURRENTLY OUT OF THE COUNTRY, THAT HE HAD TWO BROTHERS WHO RESEMBLED HIM, AND THAT THE IDENTIFICATION WAS IN ERROR. WE HAD NO PROOF THEY WOULD ACCEPT.

IN DECEMBER THE BOY WAS SEEN AGAIN BY OUR DAUGHTER AND HER DATE, WHO HAD KNOWN HIM AT THE HIGH SCHOOL AND WAS ALSO A MEMBER OF THE FOREIGN COMMUNITY. AGAIN, WE CONTACTED THE STATE DEPARTMENT WITH OUR CONCERN.

THE STATE DEPARTMENT RESPONDED IN JANUARY OF 1984, STATING THAT THE EMBASSY HAD AGAIN ASSERTED THAT THE BOY WAS NOT IN THE COUNTRY, THAT THE FAMILY WAS PREPARING TO MOVE OUT OF THE AREA BECAUSE OF OUR "HARRASSMENT", AND THAT THE STATE DEPARTMENT SHOULD PREVAIL UPON US TO STOP CAUSING PROBLEMS.

WE WERE FRUSTRATED AND IRRITATED, BUT WE WERE ASSURED BY THE STATE DEPARTMENT THAT THEY HAD GONE TO THE LIMIT OF THEIR ABILITY TO HELP US.

TO OUR SHOCK, THE FAMILY WAS INDEED RELOCATED -- TO A HOUSE ACROSS THE STREET FROM US, NOT MORE THAN 75 YARDS FROM OUR FRONT DOOR! ALL OF US, INCLUDING OUR DAUGHTER, NOW SAW HER RAPIST SEVERAL TIMES A WEEK AS HE MOVED ABOUT THE NEIGHBORHOOD. WE ALSO SAW HIS BROTHERS, WHOM THE EMBASSY KEPT SAYING WE WERE MISTAKING FOR THE RAPIST AS THEY CONTINUED TO DENY HIS PRESENCE IN THIS COUNTRY. THE RAPIST HIMSELF PLAYED THE GAME OF FREQUENTLY FOLLOWING HOLLY TO THE GROCERY STORE, FOR EXAMPLE, WAITING FOR HER TO COME OUT, AND THEN SPEEDING OFF WITH A SQUEAL OF TIRES.

OUR INITIAL CONTACT AT THE STATE DEPARTMENT FINALLY WAS ABLE TO DETERMINE THAT THE RAPIST'S WIDOWED MOTHER HAD BEEN GIVEN A NOMINAL POSITION AT THE EMBASSY AS A SECRETARY. THIS PRESUMABLY PROVIDED HER AND HER FAMILY, INCLUDING THE RAPIST, WITH DIPLOMATIC IMMUNITY ONCE AGAIN, ALTHOUGH IT IS BELIEVED THAT THE RAPIST'S RE-ENTRY INTO THIS COUNTRY, WHILE NEVER OFFICIALLY ACKNOWLEDGED, WAS ON A STUDENT VISA FOLLOWING HIS FATHER'S DEATH.

WHEN CHUCK ASHMAN'S BOOK ON DIPLOMATIC CRIME WAS PUBLISHED IN MAY, WE HAD REACHED THE LIMITS OF OUR TOLERANCE FOR THIS SITUATION, BUT WE CONTINUED POWERLESS TO EFFECT ANY CHANGE. THE EXPLOSION OF PUBLICITY RESULTING FROM THE BOOK APPEARS TO US TO HAVE PUT PRESSURE ON THE SAUDI ARABIAN EMBASSY THAT HAS HAD SOME GRATIFYING RESULTS.

ON SATURDAY, JUNE 13, WE ENGAGED A PRIVATE INVESTIGATOR, AT OUR EXPENSE, AND HE PHOTOGRAPHED THE RAPIST. WE OFFERED THE PHOTOGRAPHS TO THE STATE DEPARTMENT AS EVIDENCE OF HIS PRESENCE IN THIS COUNTRY.

ON SUNDAY, JUNE 14, 1987, WE WERE TOLD BY THE STATE DEPARTMENT THAT THEY HAD BEEN OFFICIALLY INFORMED AT 4:00 P.M. THAT "THE SUBJECT IS NOT IN THIS COUNTRY." THE IMPLICATION WAS THAT HE HAD LEFT AT THAT TIME. WE HAVE NOT SEEN HIM SINCE THAT DAY.

WE HAVE REASON TO BELIEVE THAT HE HAS COMPLETED THREE YEARS AT A STATE SUPPORTED UNIVERSITY AND HAS BEEN PLANNING TO FINISH HIS DEGREE THERE THIS COMING YEAR. OUR FEAR HAS BEEN THAT EVEN IF HE WERE GONE NOW, HE WOULD FIND A WAY TO RETURN IN THE FALL.

WITH THE CONTINUING PUBLICITY, HIS MOTHER WAS RELEASED FROM HER POSITION AT THE SAUDI ARABIAN EMBASSY EFFECTIVE JUNE 16, 1987. WITH THE LOSS OF HER DIPLOMATIC STATUS, SHE THEN HAD THIRTY DAYS IN WHICH TO LEAVE THE COUNTRY (A GRACE PERIOD GRANTED TO ANY FORMER DIPLOMAT). ONCE SHE DEPARTS THE U.S., SHE CAN, OF COURSE, APPLY FOR ANOTHER KIND OF VISA. THIS WOULD EXTEND TO ALL MEMBERS OF HER FAMILY.

WE HAVE INFORMATION THAT SHE HAS MOVED, ONCE AGAIN, APPROXIMATELY ONE MILE AWAY, BUT HER PRESENT ADDRESS IS UNKNOWN TO THE STATE DEPARTMENT AS WELL AS THE IMMIGRATION AND NATURALIZATION SERVICE, WHICH IS THE ENFORCEMENT ARM. TO OUR KNOWLEDGE, SHE IS STILL HERE.

AS FOR HER SON, OUR DAUGHTER'S ATTACKER, WE HAVE REASON TO BELIEVE THAT HE IS ACTUALLY IN HIS OWN COUNTRY OF SAUDI ARABIA AT THIS TIME AND THAT HIS SAUDI PASSPORT HAS BEEN REVOKED. SHOULD THIS BE UNTRUE, AND HE ATTEMPTS TO RE-ENTER, HE HAS BEEN RED-FLAGGED BY THE INS AND WILL BE PREVENTED FROM ENTRY AND/OR DETAINED FOR A HEARING.

Summary

THE ABOVE PARAGRAPHS ARE ONE FAMILY'S EXPERIENCE WITH THE INEQUITIES IN DIPLOMATIC IMMUNITY. IN THE LONG RUN, HOWEVER, I HAVE COME TO CONSIDER US ONE OF THE FORTUNATE FEW. WE WERE ABLE TO PROVIDE OUR DAUGHTER WITH BOTH THE PHYSICAL AND THE INCREDIBLY IMPORTANT EMOTIONAL HELP WHICH SHE REQUIRED.

Judy's Statement, page 9.

HER PSYCHOTHERAPY CONTINUES TO THE PRESENT. THIS IS NOT TRUE FOR ALL VICTIMS, AND WHILE WE SEEK TO HAVE THE PERPETRATORS PUNISHED, ONE OF OUR PRIMARY OBLIGATIONS SHOULD BE THE PHYSICAL AND EMOTIONAL CARE OF THE VICTIM. IT WILL FOREVER AMAZE ME, AS A MOTHER IF IN NO OTHER WAY, THAT A FATHER'S PROFESSION CAN SHIELD HIS SON FROM THE CONSEQUENCES OF HIS FELONIOUS ACT.

ON THE OTHER HAND, I FEEL OBLIGATED TO STATE THAT I HAVE RELATIVES WHO ARE SERVING OUR COUNTRY IN NON-AMBASSADORIAL POSITIONS IN OTHER COUNTRIES. THE PRESENT TREATY GOVERNING DIPLOMATIC IMMUNITY PROTECTS THEM FROM ANY "TRUMPED-UP" CHARGES. I WOULD EXPECT THEM TO PAY THE PRICE FOR A CRIME THEY MIGHT COMMIT AS LONG AS THE LAWS UNDER WHICH THEY WOULD BE CHARGED AND PROSECUTED WERE FAIR AND COMPARABLE TO OUR OWN. ESSENTIALLY I FEEL THAT DIPLOMATS MUST HAVE DIPLOMATIC IMMUNITY IN ORDER TO DISPATCH THE MISSION WITH WHICH THEY ARE ENTRUSTED. IT IS EVEN POSSIBLE THAT THEY COULD NOT FUNCTION EFFECTIVELY IF CERTAIN OF THEIR STAFF WERE NOT ALSO GRANTED IMMUNITY. HOWEVER, I FAIL TO UNDERSTAND HOW ANY MEMBER OF A MISSION, INCLUDING CHILDREN SERVANTS AND OTHERS, CAN ADVANCE THEIR OWN COUNTRY'S PURPOSES AND HONOR BY BEING ALLOWED TO RUN AMOK.

IN THIS COUNTRY WE HAVE DUE PROCESS OF LAW. IT IS NOT SO THE WORLD OVER. THEREFORE, WE SHOULD PUNISH OURS, AND REMOVE THEM FROM THE SERVICE THEY HAVE DISHONORED, AND WE SHOULD DEMAND THAT OTHER COUNTRIES PUNISH THEIRS, AND REMOVE THEIR RIGHT TO RETURN TO THIS COUNTRY OR ANY OTHER FREE STATE.

WE NEED SOME FORM OF DIPLOMATIC IMMUNITY. AT NO POINT IN OUR HISTORY HAVE WE GRANTED ANYONE A LICENSE TO COMMIT FELONY.

I AM GRATEFUL FOR THIS OPPORTUNITY TO PRESENT OUR CASE AND MY VIEWS, AND I REGRET THAT I CANNOT BE HERE IN PERSON. HOWEVER CONTINUED CONCERN FOR OUR FAMILY'S ANONYMITY, PRIVACY AND SECURITY PRECLUDES MY APPEARANCE.

Judy
"Judy"

witness

August 4, 198
date

STATEMENT OF SELWA ROOSEVELT
CHIEF OF PROTOCOL OF THE UNITED STATES

I will begin by discussing immunity and briefly explaining its purpose.

Diplomatic immunity is a fundamental principle of international law under which certain foreign officials are not subject to the jurisdiction of local courts or other authorities for official or personal activities. The reason for immunity is simple and basic: it is to assure that diplomatic representatives are able to carry out the official business of their governments without undue influence or interference from the host country. It enables them to work in an environment of freedom, independence and security. It was not designed to benefit individuals but rather to ensure the efficient performance of the functions of the mission.

Diplomatic immunity has its roots in antiquity. In our country, statutes extending immunity to diplomats were first enacted by the Congress in 1790. The customary international law of diplomatic immunity was later codified in 1961 when the Vienna Convention on Diplomatic Relations was drafted. This treaty entered into force for the United States in 1972. In 1978 the Diplomatic Relations Act repealed the 1790 statutes and established the Vienna Convention as the definitive United States law on the subject. The corresponding law governing consular immunity is the Vienna Convention on Consular Relations of 1963. I have attached to my statement a chart which shows the degree of immunity accorded to personnel of diplomatic missions and consular posts.

Having given this background, I want to make very clear that the Department of State abhors any wrong-doing on the part of persons entitled to immunity. I am not here to defend the indefensible, that is, the unlawful acts of persons having immunity. The serious abuses of those immunities - although rare - which have brought this matter to your attention concern me deeply and I have worked hard during my five years as Chief of Protocol to institute a more effective response to instances of diplomatic crime. I have established a reputation in the diplomatic community for toughness. I cannot overemphasize how strongly I feel and have always felt about this issue. At the same time, we have to bring rational thinking to this subject. We must weigh extreme remedial measures against the grave injury that those measures could cause to U.S. interests.

Mr. Chairman, with all due respect, we cannot support this proposal for a most elemental reason: it would be detrimental to United States interests abroad. Regardless how grievous these matters may be, our own national interest must take precedence over any other consideration.

In a world where discord and disagreement are prevalent in relations among states, the principle of immunity is something the community of nations has agreed upon.

BUT THERE IS A SECOND REASON. WE ARE AN HONORABLE NATION - WE ARE NOT AN IRAN. WE HAVE SET OUR SIGNATURE ON A TREATY. ENACTMENT OF THIS BILL WOULD PLACE THE UNITED STATES IN VIOLATION OF ITS INTERNATIONAL OBLIGATIONS. WE DO NOT BELIEVE THAT OUR GOVERNMENT, TO WHICH SO MANY OTHERS LOOK FOR GUIDANCE, SHOULD ABROGATE ITS RESPONSIBILITY UNDER INTERNATIONAL LAW.

IF THE UNITED STATES GOVERNMENT UNILATERALLY ALTERS ITS TREATY OBLIGATION, WE SURELY WILL INVITE MORE HARMFUL RECIPROCAL ACTION.

LET'S CONSIDER WHAT MIGHT HAPPEN IF SIMILAR LEGISLATION WERE PASSED IN OTHER COUNTRIES. THE BILL WOULD ELIMINATE IMMUNITY FOR CRIMES OF VIOLENCE, DEFINED AS: "THE USE, ATTEMPTED USE OR THREATENED USE OF PHYSICAL FORCE AGAINST THE PERSON OR PROPERTY OF ANOTHER." THIS IS A LARGE CATEGORY OF CRIMES. OTHER COUNTRIES MIGHT RESPOND BY ELIMINATING IMMUNITY EVEN MORE BROADLY.

SIMILARLY, THE TERMS "RECKLESS DRIVING," "DRUG TRAFFICKING" AND "DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS" MIGHT BE INTERPRETED BROADLY BY OTHER COUNTRIES. IN ADDITION, EVEN IF ANOTHER COUNTRY ELIMINATED IMMUNITY FOR PRECISELY THE SAME CRIMES THAT THE BILL WOULD COVER, AMERICANS STILL WOULD FACE

UNEQUAL TREATMENT. THOSE SERVING IN COUNTRIES WITH SIMILAR LEGISLATION COULD BE ARRESTED, DETAINED AND QUESTIONED UNTIL THE MATTER WAS FULLY ADJUDICATED. IN THE UNITED STATES, PERSONS MIGHT BE FREE ON BAIL PENDING TRIAL, BUT IN ANOTHER COUNTRY, THEY MIGHT BE HELD FOR MONTHS.

ONCE THE FLOODGATES ARE OPEN, OTHER GOVERNMENTS MAY NOT MIRROR THIS BILL IN THE RESPONSE THEY MAKE. THEY COULD GO BEYOND THE MEASURES PROPOSED BY THE BILL, FOR EXAMPLE, BY LIMITING THE IMMUNITIES OF DIPLOMATIC AGENTS. OR, THEY MIGHT CHOOSE TO KEEP INTACT THE IMMUNITY OF ADMINISTRATIVE AND TECHNICAL STAFF FOR VIOLENT CRIMES, BUT ELIMINATE THEIR IMMUNITY FOR OTHER CRIMES, SUCH AS ESPIONAGE.

THE LANGUAGE OF THE PROPOSED LEGISLATION COVERS ONLY MEMBERS OF THE ADMINISTRATIVE AND TECHNICAL STAFF AND THE SERVICE STAFF OF DIPLOMATIC MISSIONS, AND CONSULAR EMPLOYEES. PERSONS NOT AFFECTED WOULD BE DIPLOMATIC AGENTS, MEMBERS OF THEIR FAMILIES, AND FAMILY MEMBERS OF THE ADMINISTRATIVE AND TECHNICAL STAFFS OF EMBASSIES.

BASED ON A REVIEW OF OUR FILES FOR A RECENT TWELVE-MONTH PERIOD AND A REVIEW OF THE ASHMAN-TRESCOTT BOOK, WE FIND THAT ONLY TWO INCIDENTS WOULD HAVE BEEN ADDRESSED BY THIS LEGISLATION. IN LIGHT OF THE FACT THAT ONLY TWO PEOPLE WOULD

HAVE BEEN "BROUGHT TO JUSTICE" HAD THIS LEGISLATION BEEN IN FORCE PREVIOUSLY, WE ASK WHETHER ITS PASSAGE, UNDERMINING LONG-STANDING INTERNATIONAL CONVENTION, WOULD REALLY SERVE OUR BEST INTEREST, ESPECIALLY WHEN YOU CONSIDER THAT SO MANY AMERICANS AND THEIR DEPENDENTS ARE SERVING OVERSEAS?

THE MEMBERS OF THE ADMINISTRATIVE AND TECHNICAL STAFF OF AN EMBASSY MUST HAVE FULL CRIMINAL IMMUNITY IN ORDER TO PERFORM THEIR JOBS EFFECTIVELY. THESE PERSONNEL PERFORM TASKS FUNDAMENTAL TO THE OPERATION OF THE EMBASSY. MANY OF THEM, INCLUDING COMMUNICATORS WHO TRANSMIT ENCODED MESSAGES AND SECRETARIES WHO TYPE THE MISSION'S CLASSIFIED DOCUMENTS, ENGAGE IN VERY SENSITIVE WORK. THEY AND THEIR FAMILIES COULD BE SUBJECTED TO THE SAME PRESSURES THAT DIPLOMATS FACE. WE CANNOT TAKE GREAT COMFORT IN THE FULL IMMUNITY OF THE AMBASSADOR, OF THE FBI LEGAL ATTACHE, OF A MILITARY ATTACHE, OR OF THE PERSONNEL OF OTHER AGENCIES ENGAGED THROUGHOUT THE WORLD IN SUCH SENSITIVE WORK AS FIGHTING TERRORISM AND DRUGS, IF WE KNOW THAT THOSE WHO DO THEIR CLERICAL WORK AND TRANSMIT THEIR CLASSIFIED MATERIAL BACK TO WASHINGTON COULD BE INTERROGATED AND JAILED BY HOSTILE RECEIVING STATE AUTHORITIES.

If the intent of the bill is also to reduce the immunity of family members of diplomats and family members of the administrative and technical staff - as we have been led to believe informally - we cannot support the proposal.

Under the Vienna Convention on Diplomatic Relations, members of the family of a diplomatic agent have full criminal immunity, as do members of the administrative and technical staff of a mission and their families. Lower level members of embassy staffs have criminal immunity for their official acts. In addition, under the Vienna Convention on Consular Relations, consular employees have criminal immunity for acts performed in the exercise of consular functions. These immunities, which serve important objectives, all would be curtailed if the bill were enacted.

We believe complete immunity from criminal jurisdiction assured to diplomats is fundamental to diplomatic relations. Diplomats could not perform their duties if they faced criminal liability under local law for normal performance of their jobs, or if they could be harassed by the receiving State bringing false charges. Moreover, the diplomat's own immunity would be meaningless if his family residing with him did not have the same immunities. The threat of actions against family members could be used to intimidate the diplomat.

CAN YOU IMAGINE THE SPECTER OF THE AMERICAN AMBASSADOR'S SPOUSE INVOLVED IN AN AUTOMOBILE ACCIDENT BEING TAKEN AWAY BY THE POLICE IN CERTAIN COUNTRIES--TO BE HELD IN JAIL ACCORDING TO LOCAL STATUTE? OR WORSE, BEING HELD ON TRUMPED UP CHARGES? THINK OF THE IMPLICATIONS. OF COURSE, WE COULDN'T RESPOND IN KIND BECAUSE OUR SYSTEM DOES NOT OPERATE THAT WAY.

THE UNITED STATES JUDICIAL SYSTEM IS PREMISED ON THE RULE OF LAW, AND MANY OF THE POTENTIAL ABUSES THAT I HAVE JUST DESCRIBED MAY SEEM FAR-FETCHED TO AN AMERICAN. BUT UNITED STATES PERSONNEL FROM A VARIETY OF AGENCIES SERVE OVERSEAS IN COUNTRIES WHERE THE RISKS THAT I HAVE JUST OUTLINED ARE VERY REAL INDEED. IF THE UNITED STATES WERE TO REDUCE THE IMMUNITIES OF DIPLOMATIC PERSONNEL HERE, I AM CERTAIN THAT FOREIGN STATES WOULD RECIPROCATE BY RESTRICTING THE IMMUNITIES ACCORDED TO U.S. PERSONNEL. OUR EMBASSIES IN HOSTILE FOREIGN COUNTRIES WILL NOT BE ABLE TO DO THEIR JOBS EFFECTIVELY IF THE CHILDREN OF DIPLOMATS COULD BE IMPRISONED AS A MEANS TO PRESSURE THEM AND IF THE MEMBERS OF THE ADMINISTRATIVE AND TECHNICAL STAFF FACE THE RISK OF IMPRISONMENT.

SO FAR, I HAVE ONLY ADDRESSED THE EFFECT OF THE BILL ON OUR PERSONNEL AT EMBASSIES. BUT THE BILL WOULD ALSO AFFECT SOME PERSONNEL AT CONSULATES.

ALTHOUGH THE PROPOSED LEGISLATION WOULD NOT AFFECT CONSULAR OFFICERS, IT WOULD AFFECT CONSULAR EMPLOYEES, WHO PERFORM IN CONSULATES THE SAME FUNCTIONS THAT ADMINISTRATIVE AND TECHNICAL STAFF PERFORM IN EMBASSIES. THE IMMUNITY FROM JURISDICTION ACCORDED TO CONSULAR OFFICERS AND CONSULAR EMPLOYEES BY THE VIENNA CONVENTION ON CONSULAR RELATIONS, AS I NOTED BEFORE, IS MUCH MORE LIMITED THAN THE REGIME WHICH APPLIES TO DIPLOMATS. CONSULAR IMMUNITY APPLIES ONLY TO ACTS PERFORMED IN THE EXERCISE OF CONSULAR FUNCTIONS, I.E., TO "OFFICIAL ACTS." WHEN A CASE IS BROUGHT, THE COURT DETERMINES WHETHER THE ACTS WERE PERFORMED IN THE EXERCISE OF CONSULAR FUNCTIONS. FAMILY MEMBERS HAVE NO OFFICIAL ACTS AND HAVE NO IMMUNITY. THUS, CONSULAR OFFICERS ARE NOW SUBJECT TO JURISDICTION WITH RESPECT TO MOST "CRIMES OF VIOLENCE," AS INDEED ARE CONSULAR EMPLOYEES. WHILE CONSULAR OFFICERS AND EMPLOYEES MAY RAISE THEIR FUNCTIONAL IMMUNITY AS A DEFENSE IN CONNECTION WITH A SPEEDING CHARGE OR ACCIDENT, THIS ITSELF IS NOT A BAR TO JUDICIAL ACTION. THE COURTS WOULD DETERMINE WHETHER OR NOT SUCH A DEFENSE WOULD APPLY.

THUS, EVEN WITH RESPECT TO THE MORE LIMITED IMMUNITY ACCORDED CONSULAR EMPLOYEES, THE BILL WOULD PLACE THE UNITED STATES IN VIOLATION OF THE VIENNA CONVENTION AND WOULD PUT U.S. PERSONNEL AT RISK OF RECIPROCAL MEASURES. THERE MAY, MOREOVER, BE INSTANCES IN WHICH A CONSULAR OFFICER IS CHARGED WITH A violent crime for an act performed in the exercise of consular functions. For example, a hostile country might charge a U.S. consular officer with assault if he took measures to defend himself against physical attack by a disgruntled visa applicant. The United States should be entitled to assert consular immunity to prevent the case from going forward. This measure, if enacted, could provoke reciprocal legislation which would bar such assertion of immunity.

At this point, Mr. Chairman, I should point out there are countries with which the United States has concluded treaties extending broader immunities for consular personnel. The United States has entered into such agreements with the Soviet Union, the People's Republic of China, Bulgaria, the German Democratic Republic, Hungary, Poland, and Romania. A similar agreement also exists with the Philippines. (Bulgaria, the GDR and Romania have no consular posts in the United States.) Thus, our consular employees in such countries as the USSR and the PRC have full criminal immunity and we are obligated to provide the same immunities to consular employees of those countries. The proposed legislation, therefore, would violate these bilateral agreements ~~in addition~~ to violating the Vienna Conventions.

While the Department of State cannot support the proposed legislation, which would call into question the entire framework of diplomatic immunity, we have taken a variety of steps to curtail abuses of diplomatic immunity that are wholly consistent with international law.

Incidentally, it may be of interest to the Committee that the British Foreign Office instituted a full review of the Vienna Convention in the aftermath of the fatal shooting of a policewoman by a gunman in the Libyan Embassy and the attempted abduction of a Nigerian exile. The British concluded that it would be wrong to amend the Vienna Convention as the solution to the abuse of diplomatic immunity, but instead implemented a firmer policy in the application of the Convention.

I should like to take this opportunity to inform the Committee of recent steps we have taken.

1. Barring Reentry: Some years ago I initiated a system to bar the reentry into the United States of serious offenders entitled to criminal immunity at the time of expulsion. The names of the offenders are entered into the Department's world-wide Automated Visa Lookout System (AVLOS) so that should an offender seek another visa, the application is held up until the Department's advice can be

OBTAINED. THE NAMES ALSO ARE GIVEN TO THE CENTRAL OFFICE OF THE IMMIGRATION SERVICE, TO ALERT PORTS OF ENTRY THAT ARRIVALS OF SUCH PERSONS ARE TO BE REPORTED IMMEDIATELY TO THE DEPARTMENT.

WE HAVE FOUND, HOWEVER, THAT THE SYSTEM WAS NOT PERFECT AND THAT IN AT LEAST THREE CASES, THE PERSONS EXPELLED REENTERED THE UNITED STATES. TO PREVENT ANY OTHER SUCH OCCURRENCE, WE WILL ENSURE THAT THE DIPLOMATIC VISA IS CANCELLED BEFORE AN ALLEGED OFFENDER LEAVES THE COUNTRY. SHOULD THE PERSON LEAVE BEFORE THIS IS DONE, WE WILL INFORM THE MISSION CONCERNED THAT THE PRINCIPAL ALIEN CANNOT BE REPLACED UNTIL THE VISA HAS BEEN CANCELLED.

2. POLICE GUIDANCE: IN MARCH, THE DEPARTMENT PUBLISHED UPDATED AND MORE COMPREHENSIVE WRITTEN GUIDANCE FOR LAW ENFORCEMENT OFFICERS ON THE HANDLING OF INCIDENTS INVOLVING FOREIGN DIPLOMATIC AND CONSULAR PERSONNEL. IT HAS BEEN DISTRIBUTED NATION-WIDE. I AM HAPPY TO MAKE THIS BOOKLET AVAILABLE TO THE COMMITTEE. AS YOU WILL SEE, WE HAVE POINTED OUT THE NECESSITY FOR CAREFUL AND COMPLETE POLICE WORK AT THE TIME OF THE INCIDENT IN ORDER TO LAY THE BASIS FOR POSSIBLE FUTURE PROSECUTION WHEN IMMUNITY CEASES TO EXIST. IN OTHER WORDS, WE URGE THAT CHARGES BE PURSUED AS FAR AS POSSIBLE IN OUR JUDICIAL SYSTEM. AFTER THE OFFENDER

LEAVES THE UNITED STATES, THE EXISTENCE OF AN OUTSTANDING ARREST WARRANT MAY BE ENTERED INTO THE RECORDS OF THE IMMIGRATION AUTHORITIES. THE EXISTENCE OF THE WARRANT AND THE KNOWLEDGE THAT THE FEDERAL GOVERNMENT WILL ASSIST IN SERVING THE WARRANT WOULD DETER AN OFFENDER FROM ATTEMPTING TO RETURN TO THE UNITED STATES.

IN THE RECENTLY PUBLICIZED AFGHAN AUTO CASE, WE LEARNED THAT NEW YORK LAW ENFORCEMENT AUTHORITIES DISCONTINUED THE INVESTIGATION ON THE ASSUMPTION THAT THE DRIVER WAS IMMUNE. YOU MIGHT BE INTERESTED TO KNOW THAT NEITHER THE U.S. MISSION TO THE UNITED NATIONS NOR THE OFFICE OF PROTOCOL WAS CONSULTED IN MAKING THIS DETERMINATION. HOWEVER, AS SOON AS THE MISSION LEARNED OF THIS, IT ASKED THE POLICE TO REOPEN THE INVESTIGATION. WE DID THIS BECAUSE WE BELIEVE FIRMLY THAT IN ALL OF THESE CASES, THE FACTS MUST BE BROUGHT TO LIGHT.

3. PARENTAL RESPONSIBILITY: IN PARTICULARLY EGREGIOUS CASES INVOLVING JUVENILE OFFENDERS, I HAVE HAD THE ENTIRE FAMILY EXPELLED FROM THE UNITED STATES. THIS POLICY ENSURES THAT PARENTS WILL BE FULLY ACCOUNTABLE FOR THE ACTS OF THEIR CHILDREN.

4. TRAFFIC OFFENSES - 8 POINT PROGRAM: IN SEPTEMBER 1985, THE DEPARTMENT'S OFFICE OF FOREIGN MISSIONS INSTITUTED A PROGRAM TO MONITOR TRAFFIC VIOLATIONS AND INCREASE THE OBSERVANCE OF TRAFFIC LAWS AND REGULATIONS. UNDER THE PROGRAM, THE DEPARTMENT ASSESSES POINTS FOR ALL TRAFFIC VIOLATIONS USING THE AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATOR'S STANDARDIZED POINT SYSTEM. THE ACCUMULATION OF 8 POINTS DURING A TWO-YEAR PERIOD MAY RESULT IN THE LOSS OF THE PRIVILEGE TO DRIVE IN THIS COUNTRY. PERSONS WITH UNPAID PARKING VIOLATIONS INCUR 1 POINT FOR EACH TICKET. SPEEDING VIOLATIONS ARE ASSESSED AT 2 OR 4 POINTS DEPENDING UPON THE RATE OF SPEED, AND PERSONS DRIVING WHILE INTOXICATED ARE ASSESSED 8 POINTS. UP TO THIS TIME, 15 DRIVERS' LICENSES HAVE BEEN PERMANENTLY SUSPENDED. WE DO NOT PERMIT A MEMBER OF THE DIPLOMATIC COMMUNITY WHO HAS OPERATED A MOTOR VEHICLE UNDER THE INFLUENCE OF ALCOHOL TO OPERATE A MOTOR VEHICLE IN THE UNITED STATES AGAIN. THE PROGRAM HAS HAD A SALUTARY EFFECT ON THE DRIVING HABITS OF PRIVILEGED PERSONNEL.

5. FIREARMS: IN MAY 1986, WE REISSUED A CIRCULAR ON THE SUBJECT OF FIREARMS, POINTING OUT THAT FAILURE TO COMPLY WITH LOCAL LAWS AND REGULATIONS PERTAINING TO FIREARMS WILL SUBJECT THE OFFENDER TO EXPULSION.

6. Identification Documents: Recently Protocol began issuing newly designed identification documents to all embassy personnel entitled to any degree of immunity. The cards identify the individual, state the type of immunity which he has, and provide phone numbers to call 24 hours a day if a law enforcement official has questions. In cases where immunity is limited the cards state that the bearer is not immune from arrest. Similar cards will be issued to consular officers and employees next year.

7. Definition of "members of the family": The Vienna Convention requires the parties to extend privileges and immunities to family members forming part of the household, but does not define family members. In May 1986, we informed the missions that we would set age limits beyond which the Department no longer would extend privileges and immunities to dependent children. The cut-off age is 21, unless the child is a full-time student, in which case the age limitation is 23. This step has reduced the number of persons entitled to privileges and immunities.

WE ARE CONTINUALLY REVIEWING MEANS TO REDUCE THE NUMBERS OF PERSONS ENTITLED TO IMMUNITY. FOR EXAMPLE, WE ARE NOT OBLIGATED BY THE VIENNA CONVENTION TO EXTEND FULL IMMUNITY TO ALIENS "PERMANENTLY RESIDENT IN THE UNITED STATES." ACCORDINGLY, WE PROPOSE TO TERMINATE PRIVILEGES AND IMMUNITIES FOR LOCALLY HIRED MEMBERS OF EMBASSY STAFFS WHO HAVE RESIDED IN THE UNITED STATES FOR 10 YEARS OR MORE.

IN CLOSING, I WISH TO EXPRESS MY APPRECIATION FOR THIS OPPORTUNITY TO PRESENT THE DEPARTMENT'S VIEWS ON THIS SENSITIVE MATTER. ALSO, I WISH TO ASSURE YOU AGAIN THAT WE STAND READY TO TAKE ACTION IN ANY SITUATION WHERE A PERSON WITH IMMUNITY ACTS CONTRARY TO THE LAW.

MY COLLEAGUE AND I WILL NOW BE PLEASED TO RESPOND TO ANY QUESTIONS THE COMMITTEE MAY HAVE.

ATTACHMENT: CHART:- CRIMINAL IMMUNITY.

CRIMINAL IMMUNITY

DIPLOMATIC				CONSULAR	
DIPLOMATS*	ADMINISTRATIVE AND TECHNICAL STAFF	SERVICE STAFF	PERSONAL SERVANTS	CONSULAR OFFICERS	CONSULAR EMPLOYEES
(Ambassador, Ministers, Counsellors, 1st, 2nd & 3rd Secretaries, Attaches)	(Clerks, Typists, Procurement Officers)	(Drivers, Gardners, Cooks, Security Guards)	(Maids, Butlers)	(Consuls General, Consuls, Vice Consuls)	(Clerks, Typists)
FULL CRIMINAL IMMUNITY	FULL CRIMINAL IMMUNITY	CRIMINAL IMMUNITY FOR OFFICIAL ACTS ONLY	NO IMMUNITY	CRIMINAL IMMUNITY FOR OFFICIAL ACTS ONLY	CRIMINAL IMMUNITY FOR OFFICIAL ACTS ONLY
Family Members	Family Members	Family Members	Family Members	Family Members	Family Members
FULL CRIMINAL IMMUNITY	FULL CRIMINAL IMMUNITY	NO IMMUNITY	NO IMMUNITY	NO IMMUNITY	NO IMMUNITY

*This category includes diplomats at the O.A.S. and members of missions to the United Nations and a small number of persons at the World Bank and IMF.

By special agreement, on a reciprocal basis, all personnel at the Embassies of the People's Republic of China and the Union of Soviet Socialist Republics and members of their families enjoy fill criminal immunity.

By special agreement, on a reciprocal basis, personnel and members of their families at the consulates of the following countries enjoy full criminal immunity:

- Hungary
- Peoples Republic of China
- Poland
- Philippines
- Union of Soviet Socialist Republics

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PREPARED STATEMENT OF SENATOR ARLEN SPECTER

Senate Committee on Foreign Relations
August 5, 1987

Mr. Chairman, on January 20, 1987, I introduced S. 339, the Terrorist Diplomat Prosecution Act of 1987. This Act consists of two parts: a bill preventing foreign diplomats who use a firearm to commit a felony in the U.S. from escaping prosecution because of diplomatic immunity, and a resolution (S. Res. 74) seeking specific steps to achieve an international consensus on prosecution of terrorist diplomats, including amendment of the Vienna Convention on Diplomatic Relations. This legislation is very similar to legislation I first introduced on June 6, 1984, S. 2730 and S. Res. 395.

The nightmare of the "terrorist diplomat" exploded into the headlines two years ago, on April 17, 1984, when a British policewoman was shot and killed by gunmen firing from the Libyan People's Bureau in London. The world watched in horror as the triggermen were ushered out of Britain under the protective shield of diplomatic immunity, instead of being prosecuted for their cowardly act.

Less than two months later, I introduced legislation aimed at preventing a recurrence of this grotesque spectacle by making it clear that murder is not, and can never be, protected diplomatic activity.

This legislation was reintroduced in the 99th Congress on June 26, 1985, as S. 1385 and S. Res. 191.

Since that time there has been growing evidence of extensive diplomat involvement in terrorism. The abuses stem primarily from Libyan, Iranian, and Syrian diplomats and "embassies." For example, Syrian diplomatic missions were clearly implicated in a March 29, 1985, bombing of the German-Arab Friendship Union in West Berlin in which eleven persons were injured, in the aborted attempt to place a bomb aboard an ElAl plan leaving London for Tel Aviv with nearly 400 passengers aboard in April, 1985, and in the bombing of a Berlin discotheque that killed an American soldier on April 5 of that year. Moreover, President Reagan indicated that radio intercepts showed the Libyan diplomatic mission in East Beirut was also involved in the discotheque bombing.

Iranian diplomats have been linked to the deaths of the 241 American marines who were killed when their barracks in Beirut were blown up in October, 1983. Indeed, it has been reported that the money that financed the truck bombings of the U.S. and French military headquarters in Beirut originated in Tehran and was passed to the terrorists by Iran's ambassador to Syria, Ali Akbar Mohtashami, described as a key figure in Middle Eastern terrorism.

Last April, 1986, it was reported that Italy had made arrests in connection with a plot involving at least two Libyan diplomats to kill the U.S. Ambassador to Italy and the Saudi Arabian and Egyptian Ambassadors. The subsequent investigation into their activities uncovered a web of mysterious bank accounts around Europe totaling millions of dollars that apparently were used to fund Libyan terrorism. That same month, France expelled two other Libyan diplomats in connection with efforts to prevent terrorist attacks on American installations in Europe.

Nor are such diplomatic abuses limited to Middle East countries. The Bulgarian Embassy in Rome apparently provided safe haven for some of those alleged to have been involved in the attempt to assassinate the Pope, and was reported to have spirited one of the assassins out of the country in a truck they claimed was protected as a "diplomatic pouch."

These are just some examples of the growing link between so-called "diplomats" and international terrorism, and of the growing need for an international response.

Article 31 of the Vienna Convention states: "A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state." The convention thus codified a tradition of many centuries. Justice, it was assumed, would be done by the sending state.

Yet, that assumption abrogates all justice in a situation of state-sponsored terrorism. In that circumstance, obviously, the sending state will reward rather than prosecute its agent. Again, the shooting in London illustrates the problem. News reports asserted that Embassy personnel had received electronic communications from Tripoli instructing them to shoot the Libyan dissidents demonstrating near the Embassy. The result, as the whole world knows, is that eleven students were injured and a British policewoman was shot to death. No Libyans were ever prosecuted for this violence.

The grant of immunity in the Vienna Convention should be revised to allow the receiving state to prosecute diplomats for murder and other armed offenses against persons.

Critics of this proposal will argue that the present immunity protects American diplomats in hostile nations such as Eastern bloc countries and the Soviet Union. With the revisions, it would still do so.

It is inconceivable that this country or any other law-abiding country would instruct or permit diplomats to use firearms to assault political opponents. Therefore, the revisions would not limit the proper functioning of diplomatic agents. Nor could armed assault charges such as murder by firearm be readily brought on manufactured evidence. Diplomats of all countries would continue to be immune from prosecution for the sort of charge that could readily be trumped up, such as espionage or fraud.

If there is a slight risk that some country might fabricate evidence against our Ambassador that he shot someone, even though the fabrication would be obvious, that risk is worth taking. Otherwise, fanatical and lawless states such as Iran, Syria, and Libya will continue to turn their embassies into nests of terror from which murder can be routinely dispensed with impunity.

Nor is it sufficient in the face of these death squads to argue that the receiving state can adequately protect itself by expelling the terrorist-diplomat after the fact. He or she can and will simply be replaced by a new terrorist-diplomat. Assassinations will continue.

Some may argue that revising the terms of immunity will be insufficient to deter murders by fanatics employed by murderous governments. This may be so in some cases. There is a great difference, however, between surreptitious assassinations by secret agents of a foreign power and overt shootings from Embassy windows. Both are intolerable, but the latter makes the victim state compound the crime by forcing it to release the criminal.

On July 24 and September 21, 1984, hearings were held by the Senate Judiciary Subcommittee on Security and Terrorism on my bill making use of a firearm to commit a felony by foreign diplomats in the U.S. a federal felony. Witnesses included Daniel W. McGovern, Principal Deputy Legal Advisor at the State Department, and the Honorable Arthur J. Goldberg, former Supreme Court Justice and former U.S. Ambassador to the United Nations, as well as others from the Administration and academia. Mr. McGovern acknowledged the growing concern about "a relatively new aspect of the grave problem of international terrorism: the abuse of diplomatic privileges and immunities to aid and abet, or directly carry out, acts of terrorism." While noting that the Administration had not yet taken a position on the wisdom of amending the Vienna Convention, Mr. McGovern suggested that it would nevertheless be legal to enact the bill, "and it would override our current obligations under the Vienna Convention as the later expression of the legislative will."

Justice Goldberg also testified that the Vienna Convention as now written does not necessarily protect terrorist diplomats from prosecution. He cited the Supreme Court opinion in Kennedy v.

Mendoza-Martinez, 372 U.S. 144, in which he wrote that while the Constitution protects against invasion of individual rights, it is not a suicide pact. The same is true of the Vienna Convention, he told the Senate committee, "I apply ordinary and accepted rules of construction to the Vienna Convention. It would be entirely unrealistic and contrary to the spirit and intent of this convention to construe the convention as a blanket immunity to spurious diplomats, spurious embassies, and spurious diplomatic bags of state engaged in or sponsoring terrorists," explained the Justice.

While Article 31 of the Vienna Convention provides "A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state," other articles impose a responsibility on diplomats not to abuse this immunity. Article 41.1 places a duty on all persons enjoying privileges and immunities to respect the laws and regulations of the receiving state, and a duty not to interfere in the internal affairs of that state. Article 41.3 confers an obligation on the sending state not to use the premises of the mission in any manner incompatible with the functions of the mission as laid down in the convention and under general international law. Moreover, international law allows for the possibility of counter-measures in response to a material breach of a treaty by another party, and recognizes a fundamental right of self-defense.

Thus, it may be possible, as Mr. McGovern and Justice Goldberg suggested, to enact the bill changing U.S. law to allow prosecution without first amending the Vienna Convention. However, international terrorism ultimately must be met with international determination. For this reason, I have reintroduced the resolution calling on the President to seek a renegotiation of the Vienna Convention. In addition, I have included several more immediate objectives: the resolution also calls for the President to report to Congress within 90 days of enactment on the progress made by participating countries in implementing the proposals supported by the London Economic Summit Declaration on International Terrorism, issued June 9, 1984, particularly those related to the problem of abuse of diplomatic immunity, and to endeavor to formalize a commitment among our allies on further steps to be taken to control such abuses consistent with the Vienna Convention, including the possibility of domestic legislation allowing prosecution for certain abuses.

Revealing the "terrorist diplomats" for the terrorist criminals they really are is not the challenge; you can tell them by their actions. The challenge is to turn the law that now shields them into an effective weapon against them.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF CHUCK ASHMAN

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Chuck Ashman, a journalist and author. I currently cover the United Nations and international stories for the Sunday Express in London and write syndicated articles for several other newspapers. In addition, I broadcast weekly for the London Broadcasting Company.

It is a great pleasure and honor to appear before you today. I have prepared written testimony which I ask be made part of the record. I would like to spend a few minutes reviewing a brief portion of that testimony and then answer any questions that you or members of the Committee might have based upon our three years' investigation about this subject.

Pamela Trescott and I have traveled to seven countries and twenty-six of our states researching our recently published book Diplomatic Crime which details the history and abuses of diplomatic immunity and which we believe sets out clearly the need for changes in the applicable law such as the legislation now before you represents.

As we listened to the heartbreaking stories of people wronged by diplomats, we got angry. The more we heard, and the more we researched, the angrier we became. During the process I was changed from an objective journalist researching an interesting story into an advocate hoping that what I was doing would somehow lead to some critically needed changes. It is my most fervent hope that what we are involved in here today is part of that process.

Indeed, we have already made progress. We have been notified that during the past several days, a rapist in the State of Virginia who had boasted of his immunity as he raped, and who was granted immunity and who returned in recent months to terrorize his victim and her family has been finally kicked out of this country.

Ambassador Peter Sebastian stated in Chicago this past week--after emphasizing he had been briefed by the State Department and was appearing with their consent--that a new crackdown on diplomatic abuses with tougher enforcement was beginning. He added that the publication of our book and media attention on the issue is partly responsible.

The idea that a diplomat should be free from hindrance in the performance of his duties is an age-old concept. It was codified into English law by the Diplomatic Privileges Act of 1708 which granted virtually complete immunity from both criminal prosecution and civil suit to diplomatic "agents," their families, their staffs and their personal servants. "Agents" in turn had the broadest definition and covered just about everyone in an embassy or mission. Under the statute, anyone with diplomatic immunity could simply ignore any kind of summons or court document because it was without force; and, in fact, a person or government official could actually be prosecuted for initiating a suit or arrest against a person he knew to have diplomatic immunity. In 1790 the new United States adopted almost exactly the 1708 British law.

But by the late 1950s, there was general agreement in the world community that this blanket grant of immunity to the ever larger diplomatic community was getting out of hand.

Some 100 nations, including both the United States and the United Kingdom, met in Vienna at a UN-sponsored Vienna convention on Diplomatic Relations, for the purpose of drafting a new international treaty on diplomatic relations. Of the 53 articles agreed to at the conference, twelve dealt directly with the subject of personal diplomatic immunity.

Since the Vienna convention in 1961, the governments of the United States and most nations of the world have formally recognized the importance of diplomatic immunity principles with new structured guidelines and specific procedures for honoring the cardinal principles of diplomacy.

But the Vienna Convention opened a Pandora's box of problems of interpretation and allowed host nation discretion that has resulted in a wide variance of interpretations of similar incidents throughout the world. For example, in the United States and the United Kingdom a very liberal interpretation is afforded the definition of "Direct Family" which has come to mean spouses and children and even a diplomat's parents or brothers and sisters under some circumstances. This growing group of privileged visitors who are immunized from criminal prosecution and civil process are the basis of most of the problems you will hear about today.

It is not the Ambassador who rapes. It is more likely his son. It is not the Ambassador who kills. It is more likely his chauffeur. And yet, we grant immunity.

Both the United States and United Kingdom signed the Vienna Convention as it has become known, in 1961. Its provisions were enacted intact into British law in the Diplomatic Privileges Act of 1964. But for varying reasons, the U.S. Senate did not ratify the convention until 1965 and when ratifying it, delayed its effective date until 1972. But when it ratified the Vienna Convention, it did not repeal the existing broader diplomatic immunity act of 1790. Thus in 1972, when the Convention became effective, the U.S. in effect had two contradictory laws on its books. The State Department continued to adhere to the broader law until 1978 When Congress got around to repealing the 1790 law when it passed what is known as the "Diplomatic Relations Act of 1978" (DRA).

Under the Diplomatic Relations Act, no diplomatic agent, or member of his family, once his identify has been established and it is confirmed that immunity exists, can be arrested or even detained on criminal charges.

In the case of civil proceedings, the grant of immunity is not automatic in that it cannot be given directly by the State Department. It can only be granted by the courts, and usually only after the individual has made an appearance and raised the defense and the State Department has certified that the individual is entitled to immunity. As a practical matter, since lawyers know that bringing suit against immune diplomats is an exercise in futility, few suits are ever brought where it is clear that the defense will be raised.

But, Mr. Chairman, what is of paramount importance to remember is that the single rationale behind the creation of diplomatic immunity is to ensure that a diplomat will be able to perform his functions free from hindrance or the threat of hindrance and to preserve the free flow of information between that diplomat and his government.

Certainly there was no intent to allow diplomatic immunity to become a license to rape or steal or kill and to, in general, flaunt the laws and customs of the host Country.

Let me quote from the preamble of the Vienna Convention: "The purposes of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the function of diplomatic missions as representing states."

Our research has shown this noble and necessary idea has become perverted. Somehow diplomatic immunity has, in fact, become a license to allow diplomats and their dependents to flaunt the laws and codes of civilized behavior and to do so with a growing impunity and arrogance.

Over the last 18 months the government of the United Kingdom has been undertaking a painful re-examination of the laws of diplomatic immunity in the wake of the terrible murder of Yvonne Fletcher, an unarmed policewoman shot by a Libyan sniper as she stood guard outside the Libyan embassy in St. James Square.

As the government of Prime Minister Margaret Thatcher noted in an official White Paper on the subject of abuses of diplomatic immunity: "The main abuse lies not so much in the comparative number of alleged offenses . . . or in their relative gravity, but in the reliance on immunity to protect individuals for offenses without any obvious connection to the efficient performance of the functions of a diplomatic mission.

We have talked with 300 victims, family members, witnesses, police and government officials. We have heard how diplomats, their relatives and staff, have killed and raped and stolen and dealt drugs and escaped punishment.

It was with a sense first of shock and then growing outrage that we listened to the pain of a mother grieving for her dead daughter killed by a diplomat who was allowed to walk free even as the young woman was being buried. We talked with a young man who had been shot and left for dead by a diplomatic dependent who was allowed to go free even as the man fought for his life. We have talked with men and women whose lives have been ruined by the actions of diplomats and diplomatic dependents and who have no recourse in our courts or before any governmental agency.

We have talked with merchants for whom theft by persons with diplomatic immunity has become a depressingly anticipated part of doing business. We have talked with the directors of security at stores both in New York and Washington, D. C. who say the apprehension of diplomatic shoplifters have become a regular occurrence and their release such a routine matter that store security personnel don't even give it a second thought.

We have come to share the frustrations of our law enforcement officers whose job it is to protect us and to apprehend criminals but who must tell victims that those who have raped them or assaulted them or stolen from them must go free because that is what our federal government has decreed.

As New York City Deputy Police Chief Peter J. Prezioso, commander of the NYPD's intelligence division, put it: "IT's not that easy to explain to a victim why you have to release the diplomat. We have to say, 'Make believe he got away.' Because that's the reality."

Mr. Chairman, we have been told repeatedly by representatives of our State Department that the United States government takes the position that immunity protections offered diplomats and their dependents in the United States must be kept unchanged because those immunities protect our diplomats and their dependents serving abroad and that this is necessary if our representatives are to continue to effectively serve abroad.

We believe, however, that this is largely a fallacious argument.

Is it really the position of our government, that if one of our representatives abroad breaks the law of the host country, if they rape or steal or drive drunk that they deserve to walk free simply because they are in that country in an official capacity?

Let me cite just one example. In December of 1985 London police responded to a complaint of a mother who said that her six-year-old daughter had been sexually abused by a man who was baby sitting the young girl. When police went to the home of the man they reportedly found a large cache of child pornography and quite rightly they were outraged. This was a case they were determined to prosecute.

The man involved was the husband of a middle level employee at our London embassy. He had diplomatic immunity by virtue of his wife's position. So the British Foreign Office duly asked our State Department to waive the man's immunity so he could face his accusers in a British court of law. The State Department refused and the man and his wife had to be allowed to leave Britain.

It seems to us that the United States had no more right allowing this man to walk free than the government of Ghana did by insisting that the son of one of its UN attaches walk away laughing from the charges that he raped 15 women in New York.

The alleged child molester in the United Kingdom was an American citizen named James Ingley. An army of journalists chased Mr. Ingley as he returned to the United States and disappeared. Some months later, officials of the Justice Department and the State Department leaked to us the fact that Ingley was married to an intelligence agent in a very sensitive position. It was her role given as the reason for bringing Mr. Ingley home and not following the announced policy of waiving diplomatic immunity when American officials or their relatives became embroiled in legal disputes in the United Kingdom and elsewhere.

This was wrong. Perhaps it will require another forum and another day to discuss the policies and procedures regarding the placement of dependents of officials with sensitive positions without properly checking them.

Where is Mr. Ingley now? How do we explain to an ally that we are invoking diplomatic immunity to protect a dependent. If this proposal before you today became part of the law of our land, we would have every right to expect that the United Kingdom and other nations might similarly act. James Ingley would have stood trial and not have been brought home free by the U. S. government.

Our State Department relies on the argument that we must allow diplomatic immunity abuses to remain unchecked because this protects our diplomats from the fear of being hauled into some foreign court on phony charges meant to harass our government. We recognize this is a real problem, but we believe it is one which this country can address if we have the will.

Simply put, why do we attempt to maintain full and normal relations with countries who refuse to abide by the notion of civilized behavior. If our diplomats fear serving in some country because that country has a history of lodging phony charges against our diplomats and their dependents, then we should reduce our presence in that country to a single diplomat and insist that nation reduce its representation here similarly. If we cannot trust the welfare of even a single diplomat in that country, we should remove him also and deal with that country by electronic communications and insist that country remove its representatives from the United States.

This country does not need and should not want to maintain normal and full relations with nations that cannot act in a civilized manner towards our representatives.

Mr. Chairman, we believe that S. 1437 is an important step in righting some of the wrongs in one diplomatic immunity system.

We support this bill on moral, political and legal grounds. We urge its passage but also respectfully submit that you consider additional changes.

In New York City and throughout the United States, there are continuous questions raised as to the validity of the presence of the United Nations. Certainly there would be more good will and more support for its efforts if we eliminated the near daily epidemic of arrogance that occurs in the city's traffic patterns and on the police ledgers of several precincts.

It is inexcusable that 73,000 traffic violations are ignored in one year. It is unacceptable that diplomatic cars park where they want and often in interference with the flow of normal traffic and emergency vehicles. It is unconscionable that a small community of visitors parades through New York protected from the civil and criminal repercussions of their acts.

Why should theft from stores be an expected part of doing business without the right to punish? Why should the officers assigned to the area where the United Nations is located know that delegates, staff and their families, can be involved in the most serious of crimes, that even good detective work can do little more than discover their identity. They cannot be charged.

Was it really our intention to afford immunity from prosecution for rape to the lowest attache from the Ghana mission at the United Nations and through him, to his son, the actual rapist?

At the risk of being presumptuous, may we observe that while the subjects of S. 1437, diplomats committing violent acts, drug dealing and driving impaired, are among the worst abusers of the system, there are several other problems with the current diplomatic laws and in the way they are interpreted. I believe this committee can and should address these areas.

For example, if a diplomat or immune dependent leaves this country voluntarily, even if under a cloud, there is no assurance that he or she will not return with a visitors visa or a student visa.

This is an intolerable situation that cannot be allowed to continue. If need be, our immigration laws must be changed to not only allow the State Department, but to require it, to deny any kind of visa to anyone leaving this country voluntarily, under these circumstances.

Our government tells the American people that for the greater good of all and in the furtherance of good relations with foreign governments, we must deny our citizens access to our courts and the protections of our laws, both criminal and civil, if they are involved in disputes with a privileged immunized individual.

This denigrates our established passion for justice and fairness.

Should not our government compensate any American citizen if his normal rights to redress under our laws are denied him in the name of the greater good? We have long established that if the government takes a person's property, it can only do so by the payment of just compensation. The same should be true if we deny someone the right to avail himself of our legal system in any dispute with someone abusing diplomatic immunity protections.

We believe the Congress must establish a mechanism to compensate someone wronged by a diplomat. Either Congress should appropriate funds or require liability insurance from all nations sending immunized representatives to our country.

We now have some protection by mandating automobile insurance as a condition of diplomatic driving. By what logic should we deny victims the right to collect damages for personal injuries, doctors bills, lost earnings, and destroyed personal property? A victim's compensation program, comparable to that proposed by Congressman Steven Solarz is needed.

We do not have accurate or complete information concerning criminal incidents involving diplomats and dependents and staff members. Too many instances are handled casually with the first indication of immunity resulting in a discouraged police officer convincing a victim not to bother to move ahead with any complaint. There is no mandate in this country that irrevocably requires any disclosure to the State Department of each and every incident involving a diplomat or other immunized individual. This can be corrected administratively and this Committee and ultimately the public should be made aware of all such incidents.

The Vienna Convention was carefully drafted to give the host country a rather wide latitude in how it administers the rules of diplomatic immunity. Traditionally the western countries, and especially the United State, have administered the rules of diplomatic immunity in a very lenient way giving the diplomat or the dependent every benefit.

The broad granting of immunity to members of diplomatic staffs accredited to the United Nations is a serious problem area. Under Article 5 of the U.N. Charter, the United States is only obligated to grant immunity to the head of missions or persons who carry the rank of ambassador. Others may be accorded immunity, "as agreed upon" between the United States and the United Nations and the sending state. In practice, what has happened is the State Department has been granting immunity to almost anyone.

Likewise, under the headquarters agreement that established the United Nations in New York City, the United States had discretion in granting immunity to members of the United Nations' permanent staff. Again, the State Department has interpreted the agreement broadly and hundreds of U.N. staffers, and their families, are walking around New York with unwarranted immunity.

As a result, diplomats stationed in this country have been allowed to get away with almost everything. It is time that we say to the diplomats stationed here that we have had enough. No longer are we willing to allow diplomatic accreditation to be a license for crime.

Since our book was published in the United Kingdom and we obtained 500,000 signatures on petitiions for change, there have been significant developments.

The Thatcher government has repeatedly told the diplomatic corps in London that it has had enough. Britain has set forth a new policy which includes "strict application of the existing provisions of the Vienna Convention and introducing restrictive but legally justifiable interpretations of specific provisions of the Vienna convention where required."

As a result of this policy change, the United Kingdom today is ordering repeat offenders of drunk driving laws and shoplifting laws and other laws out of the United Kingdom. They are ordering out first offenders of serious crimes. Foreign Office officials have told us recently they are seeing a clear decline in the number of offenses committed by diplomats.

The victims you will hear from today represent a cross section of Americans. Each of them, however, was taught that our Constitution protects certain basic rights. Each of them have come to rely upon their citizenship as the key to basic assurances of fair play.

There is no acceptable explanation for the victim or the family of the victim of a violent crime that will justify the criminal going free without so much as a hearing and a presentation of evidence.

The bill before you today can be a first step. It would certainly be appropriate for the United States to assert its position of leadership and initiate discussions at the United Nations regarding international accord predicated upon the demands of this bill and perhaps the other changes we have suggested.

Finally, I want to thank you for this unique opportunity. It is reassuring that our law makers will listen and will deliberate. I am not wise enough to know whether this bill is absolutely the best way to solve the problem. We are committed to supporting this approach as well as any other reasonable one. The only unacceptable course of action would be to memoralize these proceedings for the record and not to prevent future criminal actions.

We urge the passage of this bill and serious discussion of other proposals designed to prevent incidents in the future victimizing more of our citizens. It is interesting to project how manyof the violent crimes we have documented would not have taken place if, at the time they entered the United States, these criminals had been told they would be subject to prosecution in our courts. Would Manuel Ayree have raped 15 women if he knew he faced the severest penalties under the law? Would the son of the Brazilian Ambassador have shot one of our citizens if he knew he would stand triel and be punished? What about the others?

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STATEMENT TO THE SENATE FOREIGN RELATIONS COMMITTEE REGARDING S. 1437 DIPLOMATIC IMMUNITY

Mr. Chairman, Members of the Committee and
Ladies and Gentlemen:

My name is Dennis Ray Martin, I am here today in my capacity as President of the **American Federation of Police.** We are a non-profit association of law enforcement officers nationwide, concerned with training and education and National Civil Defense programs. I, myself am a full time deputy sheriff assigned to our training division in Saginaw County, Michigan. In these capacities I maintain contact with thousands of Federal, State, County and Local police. I am here to represent the concerns of many law enforcement officers over the problems that we endure in dealing with serious and major crimes committed by individuals who are presently totally exempt from prosecution by reason of the very broad privilege of "diplomatic immunity". The one word to describe our problem is "frustration."

There are about **40,000** persons who are covered under "diplomatic immunity." The vast majority of these individuals are not career diplomats. Most are members of their families or employees who unfortunately take advantage of the good nature of our own citizens. These persons cause police officers and those we are sworn to protect and service great harm, from, as we have stated before, murder, rape and robbery, to drunk driving, and of course the minor traffic infractions that irritate other drivers.

Our own committee chairman on Intelligence and Narcotics matters has advised me that diplomatic credentials are sold by some nations for the purpose of preventing customs agents to discover drugs being brought in and money being shipped out under diplomatic immunity or other criminal enterprises. We are concerned that terrorists could, and we have every reason to believe have, shipped under the protection of diplomatic pouches such items as small arms weapons and explosives to be used against American law enforcement officers. It is acknowledged by the FBI that agents of the KGB are free to move about the United States after assignment to staff positions at the United Nations.

The original purpose of "diplomatic immunity" is being abused by enemies of the United States. Because of the broad coverage of this immunity, federal, state, county and local police and the public are frustrated and angry. It is not hard to understand how difficult it is to an officer of the law who, on observing a diplomatic tag issued by the state department, is not able to order the car to be moved or towed, even if it is impeding heavy traffic. How can you explain the **"Vienna Treaty"** to women who have been raped or mugged or robbed or nearly killed, and the person involved is not really a diplomat, but a member of his family or an employee! Justice must be served. We are a nation of laws.

We have all been raised in the tradition of equal justice under the law. **No one**, including the President of the United States can commit a crime and then not face the consequences of that act. How can a multi-rapist identified in New York City by victims, not only walk out of the police station laughing, but thwart justice on an international scale!

No one should be above the law. The idea of limiting diplomatic immunity to those who are diplomats would go a long way to solve this dilemma.

There are no clear figures to determine daily the violations that take place for several reasons. First, for those in law enforcement who observe minor crimes and infractions, and the subject turns out to be a person or a vehicle with diplomatic immunity, they simply do not waste their time filling out the reports. Victims do not press charges because the state had no way to prosecute. If indeed, we were able to keep track of every incident or offense, it would be in the many thousands. While many are minor infractions they add to a headache for lawmen.

If the laws were changed to cover serious offenses of those persons who fell into a limited diplomatic category, it would make sense. First, no one who commits a serious crime of murder, rape, or other such felonies including manslaughter, should be exempt from prosecution of our law. The purpose of diplomatic immunity is not to open the door to criminals. It is to protect the representatives of foreign states from harassment and to respect their rights to exchange documents and confidential papers. It was not intended to allow diplomatic pouches to be used to bring in illegal drugs or funds or weapons. There should be only limited immunity for members of the diplomatic family and none for those who are employees. They, too, should be subject to prosecution and fines for both serious crime and infractions of traffic laws. Parking in Washington, D.C., in New York, and other major cities, is a serious problem. But not for those who have State Department Diplomatic issued official tags. Reckless driving and driving while intoxicated are not to be tolerated by anyone. Yet, one just has to drive in these communities to see the "arrogance" of the law breakers who know our hands are tied by the present laws.

You must allow local police in emergencies to tow away vehicles that prevent fire and police vehicles from responding to emergency calls, and to arrest and hold drivers with diplomatic credentials who are a danger to citizens on our streets and highways while intoxicated. If diplomatic pouches are being used to bring in drugs or they indicate such a possibility, then those pouches should be impounded by a drug agency and examined by an international committee of diplomats for that sole purpose, and prosecution should take place.

A few weeks ago we conducted a poll of some 18,000 chiefs of police, and 3,000 county sheriffs, regarding accepting into international membership any foreign law enforcement officer whose "ideology" was anti-American. That is, those whose ideology reflects a society where the secret police are used for political arrests, torture, for acts against humanity. 96% of the American police officers stated that they wanted nothing to do with such foreign officers whose nation is anti-American. This Bill would make it clear that American law enforcement officers are no longer willing to accept the concept of "immunity from breaking the law." This Bill would enable us to investigate, arrest and prosecute those who come to our shores of a republic and enjoy our freedom and good will, and who then murder, rape and steal, thinking that they can waive a paper called diplomatic immunity and walk away free. Our citizens expect us to protect them from any of the 40,000 diplomats that break our laws. We hope you will correct an evil situation that is being abused by the broad coverage of diplomatic immunity.

Let me conclude with my thanks for your allowing me to speak here today. I feel that I represent the general response of our nations 600,000 full time police officers, and of the millions of Americans we serve.

Thank you.

Dennis Ray Martin

National President

PREPARED STATEMENT OF PAMELA TRESCOTT, ATTORNEY-AT-LAW

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Pamela Trescott. I am an attorney at law practicing in California and a lecturer on diplomatic immunity. I spent four years serving in the International Trade Administration of the United States Department of Commerce and was based in Washington, D.C., Beijing, and Taiwan. I researched the legal aspects of the study over three years which resulted in the book Diplomatic Crime.

I believe that the vast majority of diplomats and their dependents and staff in the United States are responsible individuals dedicated to their work and adhering to high standards of professional and social conduct. I know the same is true of Americans who represent our country abroad.

Unfortunately, that generality is of little relief to the victims of violent crimes whose frustration and suffering are comparable to what has been expressed to you here today.

I have a unique opportunity of wearing more than one hat with respect to this issue. First, I was victimized while in Washington, D.C. My home was burglarized and the police here were frustrated in their efforts to investigate because a ladder used to gain second story entrance was rooted on the soil of a foreign chancery.

Secondly, together with Chuck Ashman, I have researched and investigated cases throughout the U. S. and other nations and compiled them in our book on diplomatic crime.

Finally, as an attorney, I have been asked to assist individuals in securing compensation and other satisfaction in incidents involving individuals with diplomatic immunity. I welcome the opportunity to testify in support of S. 1437 which would close the umbrella, if you will, and narrow the scope of diplomatic immunity so as to place the relatives of diplomatic agents and their staff members within the jurisdiction of our laws when violent crimes are committed. I respectfully submit that this bill addresses a serious problem in a responsible manner and would help reaffirm domestic and foreign policy and would be constitutionally sound.

There are occasions when it is particularly difficult to distinguish between the rule of law and practicality. As we celebrate the 200th anniversary of our Constitution, it is difficult to explain "exceptions." It is difficult because we have come so far.

The poor may obtain legal services and medical treatment previously denied them by economic reality. Consumerism has arrived throughout corporate American and at every government agency and the age-old adage of not being able to fight city hall does not quite ring true. And yet, we must tell certain victims of violent crimes that they may not confront those who have injured and abused them.

We must tell certain victims of violent crimes that they may not avail themselves of our legal system. We must tell certain vicitms of violent crimes that this country can offer no assurance that criminals will not be free to commit other violent crimes, perhaps even victimizing the same persons again.

This is not a loophole in the law but rather an unconscionable crater of inequity. This situation is in direct opposition to the fundamentals of fair play, due process and equal protection that we as lawyers discuss, but that all citizens desperately rely upon.

The Vienna Convention on diplomatic relations was designed to codify the modern practice of nations under customary international law with respect to the treatment of foreign representatives and mission personnel. One of its primary goals was to resolve many of the inconsistencies of state practice. Supposedly, the Vienna Convention incorporated a modern functional approach to the bestowal of immunity upon foreign diplomats. Under the terms of that convention, no longer would visitors in this country who were associated in any capacity with a diplomatic mission be granted complete and unqualified immunity for their actions.

This functional approach was designed to grant privileges and immunities to foreign diplomats only to the extent necessary to enable a mission to perform its representative functions in the receiving state. That ideal is the essence of why we are here today to support this bill.

The Vienna Convention is very precise in setting forth the legitimate functions of a diplomatic mission. They are as follows: (a) representing the sending state in the receiving state; (b) protecting in the receiving state the interests of the sending state and its nationals within the limits permitted by international law; (c) negotiating with the government of the receiving state; (d) ascertaining by all lawful means conditions and developments in the receiving state and reporting thereon to the government of the sending state; (e) promoting friendly relations between the sending state and the receiving state and developing their economic, cultural and scientific relations.

These are the lofty and noble goals of a mission. In other words, that mission is in the business of communications. By what twisted logic can anyone classify a serial rapist, a drunken driver, a drug smuggler or any other felon as serving the innumerated goals of the mission in this United States from which that "functional" immunity arises?

The Vienna Convention and the numerous articles that have interpreted that treaty repeats consistently: "It is the work, rather than the official, which must be protected." It must then be also noted that it was the intention of the Vienna Convention that such officials obey all ordinary laws governing their private actions.

Violent crimes are the ultimate private actions. The son of an Ambassador shooting an innocent citizen in this city is not an act of self-defense arising out of some mission function. It is an uncivilized and unacceptable breach of our ordinary laws and must be punishable. The same is true of the other violent crimes reported to you today.

The United States at present is signatory to treaties that shield thousands of members of foreign diplomatic missions and foreign consular posts from the criminal laws of the United States: the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations. Under the former treaty, for instance, Article 36, the families of diplomatic agents, and the administrative and technical staffs of missions, including their families, are immune from the hands of the criminal law. A corresponding immunity for members of foreign consular posts is vested by the later treaty. The proposed legislation would supercede these treaty-based immunities for a narrow array of universally recognized serious crimes.

Clearly, the Congress of the United States has the constitutional right to pass legislation that may be inconsistent with treaty obligations of the United States. Frankly, I think there is a strong argument that the bill before you may not be inconsistent with the Vienna Convention. As previously stated, the concept of diplomatic immunity in that treaty is so clearly linked to function and the mandate of behavior so well established that punishment for a violent crime may indeed be an enforcement of the Vienna Convention.

It should be noted that since 1884 the Supreme Court has held that "so far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification, or repeal."

In the Heads Money Cases, 112 US 580 (1884), the Supreme Court unanimously sustained a federal immigration statute that imposed a customs charge of fifty cents on the arrival of non-citizens in the United States ports. The Court denied that Congress lacked power to override an existing treaty barring such a customs duty. This constitutional standard has been repeatedly reaffirmed in sequel cases. (See e.g. The Chinese Exclusion Case, 130 US 581, 600 (1893).

The Vienna Convention provides for disputes among signatory nations over interpretation of its mandates. The United States should be prepared to enter into arbitration not to retreat from the position set forth in the bill before you but to urge greater adherence to the goals of the Vienna Convention as set forth by representatives of signatory nations.

Certainly there would be political reaction to the enactment of this bill. Hopefully responsible nations concerned with the well-being of their citizenry would join by legislating comparable exceptions to diplomatic immunity.

The international repercussions created by enactment of S. 1437 would be modest. The President would retain his constitutional prerogative to determine whether to prosecute members of foreign missions subject to the nation's criminal laws in light of all the circumstances. See United States v. Nixon, 418 US 683, 693 (1974); United States v. Cox, 342 F.2d 167, 171 (5th Cir. 1965).

Nothing in this bill would emasculate the President from his constitutional power of pardon or commutation would could be motivated by foreign policy considerations. In other words, there can be negotiations, give and take, and even "swaps."

It has been suggested by a distinguished fellow of the Heritage Foundation that this bill be amended so as to transfer jurisdiction to the federal courts all crimes of violence committed by the classification of individuals described in the bill. It has been suggested that by federalizing these crimes the bill would safeguard the Executive Branch's voice in dealing with Vienna convention signatory nations politically when and if a crime occurs.

This proposal is not unlike the federalization of crimes that would otherwise be violations of state law when the victims fall into a particular category i.e., federal officials. I join in urging the committee seriously consider this proposed amendment.

A political and quasi-legal argument has also been raised against this bill with respect to possible retailatory actions by other nations. It is argued that if we were to prosecute, a rapist for example, it might invite that criminal's homeland to fabricate a basis for prosecution of an American diplomat or a member of his or her family.

Recent events have illustrated that if a nation wishes to fabricate charges against an American, they will do so whether or not we are proceeding in a lawful and civilized manner. I remind the Chairman within the past ten days, the government of Cuba has made public again ridiculous charges of criminal action by American diplomats, their family members and staffs. Certainly this is not retaliation for the United States prosecuting offending Cuban officials.

We learned the hard way what capitulation to terrorism, blackmail and extortion can get us. If we are to deny further due process because we fear potential future acts against us, we will have capitulated to a point of no return.

In reviewing the position taken by our State Department, there is repeated mention of the option that the offending immune criminal will be punished in his or her homeland. This is fantasy.

The difficulties in bringing evidence and witnesses to a different legal system make it virtually impossible to expect prosecution in an other nation in the absence of a legal mandate.

Finally, we must address the concern that American diplomats are often stationed in nations whose legal systems are so alien to our own that to waive diplomatic immunity would be to subject them to kangaroo courts and cruelty. In those cases where drunkenness may be penalized by flogging or where adultery may be penalized by stoning, we should by treaty establish clear procedures for actions to be taken in this country comparable to those court martials that have occurred when American servicemen attached to our missions commit unlawful acts.

It is natural to expect that after this legislation is approved, other nations will enact laws bringing the dependents and staff of American diplomats under their jurisdiction of criminal laws for violent crimes. Frankly, this should not create a problem for American diplomacy since, in most instances, American officials and those traveling with them abroad are the best behaved. Where a violent crime occurs in a country with a legal system not totally incompatible with our own, it would be appropriate to have the American involved stand trial and face potential punishment.

As to those nations that may enact laws exposing Americans to legal procedures and levels of punishment totally incompatible with American justice, there is the option of a bilateral agreement providing for each nation to try and punish its own citizens. It is our position that nothing in the Vienna Convention would prohibit such bilateral agreements.

We believe that the bill before you is bold. We believe it is a most appropriate first step in bringing the concept of diplomatic immunity down from a pedestal in the sky to the real world. We support the bill on constitutional grounds and as a moral imperative. At the same time, we would urge this committee to use the full weight of its influence to guide the State Deparatment into negotiations at the United Nations designed to bring about international consistency with this approach to diplomatic crime.

PREPARED STATEMENT OF ARTHUR W. ROVINE

I am honored to testify before you today on the subject of diplomatic immunity. I am a partner in the international law firm of Baker & McKenzie and am the immediate past Chairman of the International Law Section of the American Bar Association. I served in the State Department for eleven years, including six years as Assistant Legal Adviser for Treaty Affairs and two years as the first United States Agent to the Iran-U.S. Claims Tribunal in the Hague. I am familiar with the way in which the rules of diplomatic immunity are established and with the nature of those rules as the basic underpinning of diplomatic relationships throughout the world.

I have been asked to testify today on S. 1437, a bill introduced by Senator Helms that would subject members of a foreign diplomatic mission (other than diplomatic agents) and members of a foreign consulate (other than consular officers) to the criminal jurisdiction of the United States or of any state for any crime of violence, as defined in Section 16 of Title 18 of the U.S. Code, for drug trafficking, reckless driving, or driving while intoxicated or under the influence of alcohol or drugs. This change in U.S. law would be made notwithstanding any other provision of law, particularly, the 1961 Vienna Convention on Diplomatic Relations, and the 1963 Vienna Convention on Consular Relations.

Mr. Chairman, I cannot support this bill primarily because if enacted into law it would put American members of diplomatic missions and consular posts overseas at serious risk, and would substantially weaken the long-accepted reciprocity rules which constitute the foundation of all diplomatic relationships. I recognize the serious problem which this bill addresses, and I have no doubt that significant steps must be taken to diminish the abuses of the immunity rules perpetrated by members of diplomatic and consular missions in the United States. But in my judgment, Mr. Chairman, significant changes can be made only with the agreement of other countries, at least bilaterally in some instances, and most desirably on a world-wide scale. I say this knowing that agreements changing the rules on criminal jurisdiction are not likely to be forthcoming.

Yet the one approach we certainly cannot afford is a unilateral change of the internationally-accepted and binding rules on criminal jurisdiction. This is not just a matter of abstract moralism or compliance with rules of international law binding on the United States through custom and treaty. Rather, this is a matter of reciprocity in an area in which we have very little choice and the narrowest range of options.

It is important to understand, as we have from the time of the Founding Fathers, that reciprocity lies at the heart of diplomatic immunity. The United States, like all other states in the world community, receives diplomats from other countries and sends diplomats to other countries. The officials we send overseas are at the mercy of foreign governments, many of whom will not hesitate to apply their criminal law and procedures to our representatives, if we apply our criminal law and procedures to theirs. The only hope for a reasonable system of diplomatic exchange is a reciprocal world-wide agreement regulating the scope of criminal jurisdiction for diplomatic and consular personnel. We have that agreement now in the two Vienna Conventions.

If we apply our criminal law rules and sanctions to foreign government personnel beyond the agreed limits of the Vienna Conventions, foreign governments can and will do the same, and the results will be intolerable for us and for the international system. As we know all too well, many foreign nations have criminal law standards which are far different from ours, and many apply systems of punishment that we find unacceptable in this country, even if the charge would be appropriate under our law. Many countries will be only too happy to deal more harshly with our people than we deal with even the violently criminal of theirs.

Some governments will trump up criminal charges against our representatives. We have good reason to worry about specific governments in this regard, including those of the Soviet Union and Eastern Europe.

I note that S.1437 does not attempt to subject to U.S. criminal jurisdiction diplomatic agents and consular officers. A "diplomatic agent" is defined in Article 1(e) of the Vienna Convention on Diplomatic Relations as "the head of the mission or a member of the diplomatic staff of the mission." Under the current law, a diplomatic agent and members of the family of a diplomatic agent forming part of his household are not subject to the crimimal jurisdiction of the United States. Neither are members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households. However, members of the service staff of the mission enjoy immunity from criminal jurisdiction only in respect of acts performed in the course of their official duties. Otherwise they are subject to criminal jurisdiction. Private servants of members of the mission enjoy privileges and immunities only to the extent admitted by the receiving state (except for taxes on the payments they receive by reason of their employment). So they too are subject to criminal jurisdiction.

Similarly, the governing law with respect to consular officers requires that they not be liable to arrest or detention pending trial, except in the case of a "grave crime" and pursuant to a decision by the competent judicial authority. Beyond this rule, consular employees (as distinct from officers) are immune from arrest, detention, and criminal process only in respect of acts or omissions in the exercise of official functions.

Given the existing law, is there anything more to be done unilaterally without violating that law, and is there more to be done on an international and agreed upon basis?

It is clear that some further steps could be taken. When crimes have been committed for which there is immunity, we can use the procedure of persona non grata more frequently, and we can certainly keep a closer watch to insure that those diplomatic or consular personnel expelled from the country for criminal law violations do not return under some other guise, and are tried under our criminal laws if they do return.

We can more frequently ask foreign countries to waive the immunity of their diplomatic personnel. Waivers are not easy to come by, but pressure from the government may induce some foreign missions to waive immunity. Waivers are difficult because the

U.S. Government is itself reluctant to waive the immunity of its officials overseas. Again, reciprocity is the key. If we won't waive immunity, they won't waive. It may be possible to work out bilateral waiver agreements with certain countries.

Greater publicity may also help deter diplomatic crime, because it creates embarrassment for the sending government. We tend to play down or keep quiet altogether about crimes by diplomats. But publicity may have a desirable effect, even at the price of increased publicity abroad about any transgressions by our representatives.

Since the diplomatic pouch is sometimes used to bring weapons into a country, we might consider an agreed-upon electronic scan of the pouch. I appreciate the general governmental resistance to an electronic scan of the diplomatic pouch, but perhaps the idea could be considered anew.

We can certainly maintain rigorously our program of suspending or ending driving privileges for those diplomatic and consular personnel who repeatedly violate traffic laws and regulations.

It is also possible, in theory, to negotiate bilateral agreements with foreign governments to change or narrow the scope of diplomatic immunity. Even within the framework of a multilateral agreement, such as the Vienna Convention on Diplomatic Relations, this can be done. A multilateral treaty is no more than a set of bilateral treaty relationships. Within that general framework, it is legally possible for the United States to negotiate particular, different arrangements with other governments.

It is also possible, again in theory, to negotiate changes in the Vienna Conventions by the calling of a new conference (perhaps after study by the International Law Commission), to adopt further restrictions agreed upon by the world community in response to diplomatic crime.

Yet I would not place too much hope on such bilateral or multilateral reductions in the scope of immunity. Governments are most unlikely to agree on the elimination of full criminal immunity for family members of diplomatic agents and of administrative and technical staff. They are unlikely to restrict current immunity from criminal jurisdiction for consular employees acting in the exercise of consular functions. Governments rightly fear that other hostile governments will make diplomatic functions impossible or difficult to perform through criminal proceedings, even to the point of trumped-up charges.

S.1437 focuses as well on the administrative and technical staff of an embassy, apparently on the theory that the members of these staffs perform work that is less crucial than that of diplomatic agents, and thus criminal law jurisdiction would be appropriate in their cases. But it will be a rare government that would agree with this view. Certainly our own government does not. The message center of an embassy is staffed by technical personnel whose work is of extraordinary importance for the successful functioning of the mission. The same is true for secretaries. In my judgment, it is most unlikely that governments anywhere will agree on a bilateral or multilateral basis to reduce the criminal law immunity of administrative and technical staff.

On the other hand, there are certain limited areas in which international cooperation and agreement might be possible. We should seek the agreement of other countries to ensure that diplomatic or consular personnel expelled from the United States for violations of our criminal law do not return on other government assignments. They should not return under any circumstances, but surely not on a diplomatic or consular assignment on behalf of their government. I would hope, perhaps a bit optimistically, that at least some governments could agree to cooperate in providing evidence of criminal activity that might be available in the sending country for any possible subsequent prosecution in the host country.

Yet Mr. Chairman, while certain unilateral changes in our practices are appropriate and desirable, and while specific bilateral and even multilateral arrangements may be negotiated, the central message I have today is that changes in the basic rules concerning criminal jurisdiction cannot be done in unilateral fashion.

Even those who feel most strongly about a need for change in the law appear to support the proposition that changes in the basic rules cannot be accomplished unilaterally. The now well-known book Diplomatic Crime, by Ashman and Trescott, states flatly that "there is no unilateral remedy. One country's concept of diplomatic immunity may not be another's." (at page 18) The work refers repeatedly to the need for change in the Vienna Convention to curtail the worst abuses of diplomatic law, and demonstrates sensitivity to foreign criminal systems far different from our own. The book cites as one example the American diplomat "found drinking in public in a Middle East country that observed strict Moslem laws." (at page 115) W the country is not cited, the book stated that under the l this host country, conviction could have resulted in a pu flogging and a year in jail. The authors do not call f measures such as S.1437. They call for "a new Vienna Convention." (at page 348)

In conclusion, Mr. Chairman, while I am not optimistic about changes in the Vienna Conventions which would reduce the number of diplomatic and consular personnel entitled to immunity, and while I have no expectation that bilateral agreements could achieve that object, I nevertheless believe that changes in the fundamental rules concerning subjection of diplomatic and consular personnel to criminal jurisdiction cannot be accomplished by unilateral amendment of our law without serious adverse consequences to U.S. Government interests throughout the world.

The principles of diplomatic immunity and the inviolability of the person of the diplomat are over two thousand years old and have been part of international law and our law since the beginning of the Republic. I do not believe we can, consistent with our interests, successfully change those rules without the agreement of other countries, and I see little chance that such agreement will be forthcoming. That there have been abuses of the diplomatic immunity rules is obvious to all, however, and therefore we must take those practical steps within the law open to us and seek to enter into cooperative bilateral or multilateral arrangements in so far as agreement is possible.

That concludes my statement. Thank you very much Mr. :hairman.

STATEMENT OF BRUCE FEIN
VISITING FELLOW FOR CONSTITUTIONAL STUDIES
AT THE HERITAGE FOUNDATION

Mr. Chairman and Members of the Committee:

I am Bruce Fein, a private attorney and Visiting Fellow for Constitutional Studies at The Heritage Foundation. I strongly support S. 1437, a bill that would subject certain non-diplomatic agents and non-consular officials to the criminal law jurisdiction of the United States for a select group of violent crimes, or for drug trafficking, or for reckless driving or driving while intoxicated or under the influence of alcohol or drugs. The bill would establish sound domestic and foreign policy, would retain for the President appropriate discretion in the conduct of international relations, and would be constitutionally irreproachable.

The United States at present is signatory to treaties that shield thousands of members of foreign diplomatic missions and foreign consular posts from the criminal laws of the United States: the Vienna Convention on Diplomatic Relations; and, the Vienna Convention on Consular Relations. Under the former treaty, for instance, Article 36 cloaks the families of diplomatic agents, and the administrative and technical staffs of missions, including their families, with immunity from the hands of the crminal law. A corresponding immunity for members of foreign consular posts is created by the latter treaty. The proposed legislation would supercede the treaty immunities for a narrow array of universally recognized serious crimes.

For more than a century, the United States Supreme Court has acknowledged the constitutional prerogative of Congress to enact legislation inconsistent with outstanding treaty obligatons. In the Head Money Cases, 112 US 580 (1884), a unanimous Court sustained a federal immigration statute that imposed a customs charge of fifty cents on the arrival of non-citizens in United States ports. The Court denied that Congress lacked power to override a treaty barring such a customs duty. It explained that "so far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of the country, it is subject to such acts as Congress may pass for its enforcement, modification, or repeal." This constitutional axiom has been reaffirmed in sequel cases, and is "black letter" law today. See e.g. The Chinese Exclusion Case, 130 US 581, 600 (1889), Fong Yuc Ting v. United States, 149 US 698, 720-721 (1893). Accordingly, there is no constitutional infirmity in S. 1437 because of incompatibility with articles in the Vienna Conventions on criminal law immunity.

That incompatibility exposes the United States to reproach by other signatory nations to the Conventions under international law. Under Article 45 of the Vienna Convention on Diplomatic Relations, for instance, disputes over application of the treaty are subject to conciliation, arbitration, or the jurisdiction of the World Court at the request of a disputant.

But the international repercussions created by enactment of

S. 1437 would be modest. The President would retain his constitutional prerogative to determine whether to prosecute members of foreign missions subject to federal criminal laws in light of all the circumstances. See United States v. Nixon, 418 US 683, 693 (1974); United States v. Cox, 342 F.2d 167, 171 (5th Cir. 1965). The President exercises a comparable type of discretion in determining whether to prosecute foreign spies, such as Soviet agent Zakharov, or Rudolf Hess. Furthermore, the President could employ his constitutional powers of pardon or commutation to vindicate foreign policy considerations in the implementation of S. 1437. See Shick v. Reed, 419 US 256 (1974). The President could exchange an individual convicted under the bill for Americans detained abroad, as with the Dannilov-Zakharov swap, or Hess for Guy Powers.

The constitutional powers of the President over the prosecution and pardon of federal crimes, however, does not extend to crimes under state law. The powers are important, however, to safeguard legitimate international concerns of the President in implementing the criminal law jurisdiction of S. 1437. I would thus recommend ammending the bill to make it a federal offense for non-diplomatic agents and non-consular agents to commit a crime of violence under state law, or violate state law criminal prohibitions against drug trafficking or reckless vehicle use. By federalizing the crimes, the bill would safeguard the voice of the President in determining how and when the crminal law should be applied to members of foreign missions.

Making violations of specified state criminal laws federal crimes if committed by members of foreign missions would be neither a statutory nor constitutional anomaly. As Chief Justice Taney observed in Holmes v. Jennison, 14 Pet. 540, 570, 573-576 (1841), a state governor lacks constitutional authority to extradite persons to a foreign country for offenses committed there. Taney explained that "[a]ll the powers which relate to our foreign intercouse are confided to the general government," and were surrendered by the states. Additionally, he declared, "[t]he framers of the Constitution manifestly believed that any intercourse between a state and a foreign nation was dangerous to the Union . . . It was one of the main objects of the Constitution to make us, so far as regarded our foreign relations, one people, and one nation; and to cut off all communications between foreign governments and the several state authorities." Accordingly, the constitutional scheme of federal exclusivity in foreign affairs would be vindicated by holding members of foreign missions accountable only to federal criminal jurisdiction.

Congress is endowed with authority to apply federal criminal law to members of foreign missions under the Necessary and Proper Clause of Article I of the Constitution. The Clause authorizes legislation that addresses the Article II powers of the President to receive Ambassadors and other public ministers, and the Article III power of the federal judiciary to decide cases affecting Ambassadors or other public ministers or consuls. Congress has previously recognized the need for a federal judical forum to adjudicate disputes involving aliens or foreign citizens or dignitaries. It has conferred original jurisdiction on federal district courts over suits between citizens of foreign states and citizens of a state of the United State, 28 U.S. Code 1332, and over civil suits initiated by aliens for a tort committed in violation of international law or a treaty, 28 U.S. Code 1350. Further, federal district courts enjoy exclusive jurisdiction over suits against consuls or vice consuls of foreign states or members of a mission or members of their families, 28 U.S. Code 1351.

The Indian Country Crimes Act, 18 U.S. Code 1152, establishes a precedent for making the application of federal criminal law turn on the identity of the offender. That federal statute makes state criminal law applicable in Indian Country under the Assimilative Crimes Act, 18 U.S. Code 13, but only if the crime was between an Indian and non-Indian. Intra-Indian offenses are excluded from the Crimes Act. It tacitly endorses the imperative of federal supremacy over crimes involving persons subject to different sovereignties because Indian tribes enjoy quasi-sovereignty, although are not foreign nations under the Constitution. See generally Cherokee Nation v. Georgia, 5 Pet. 1

(1831); Worcester v. Georgia, 6 Pet. 515 (1832).

I am unpersuaded that the benefits of S. 1437 -- deterring crimes against American citizens in the United States -- are outweighed by potential retribution against members of the diplomatic and consular missions of the United States stationed abroad. The potential is insubstantial because the United States ordinarily waives its immunity under the Vienna Conventions for the types of crimes specified in S. 1437, thereby adhering to international reciprocity and creating no legal jealousies with foreign nations. Congress could also discourage retaliation by foreign nations by a statute denying any economic, military, or trade relations with any nation that prosecutes or punishes an American pursuant to unfair judicial procedures that would disentitle a judgment to recognition in United States courts under standards of international comity.

Additionally, there is no element of volition by citizens of the United States at present victimized by crimes committed by members of foreign missions. In contrast, Americans who are part of United States missions abroad voluntarily choose their status, and the legal risks of residence in a foreign country. Between the two groups, therefore, moral norms justify favoring the former because of a lack of responsibility for its group plight.

In summary, S. 1437 reflects enlightened domestic, foreign, moral and constitutional policy.

Responses of Mrs. Selwa Roosevelt to Questions Asked by Committee

Senate Foreign Relations Committee
Questions of July 31, 1987
Ref: Hearing on S. 1437

Statistics

Q. -- How many individuals within the United States are accorded some form of diplomatic immunity? Could you provide the Committee with a detailed breakdown of the number of diplomats, family members, and technical and administrative personnel residing in Washington and New York, along with the type of immunity each group holds.

A. Please see attached copy of statistics.

ATTACHMENT

PERSONS ENTITLED TO IMMUNITY - WASHINGTON, D.C. [1]

Category	Full Criminal & Civil	Full Criminal Official Acts Civil	Full Criminal No Civil	Official Acts [2]
Embassy				
Diplomats	2,831			
Family Members	6,878			
Administrative & Technical Staff		3,967		
Family Members			5,609	
Soviet Employees[3]	106			
Family Members	219			
Chinese Employees[3]	61			
Family Members	5			
Service Staff				1,020
O.A.S.				
Diplomats	220			
Family Members	494			
Mission Employees				102
Secretariat Employees				816
International Organizations				
Principal Resident Representatives	37			
Family Members	98			
Employees				13,576
Total:	10,949	3,967	5,609	15,514

The following are not entitled to any immunity: Service staff family members, domestics and their family members, international organization employee family members, consular officer family members, consular employee family members (including Hungary, Poland and the Philippines), miscellaneous employees and family members.

PERSONS ENTITLED TO IMMUNITY - NEW YORK CITY[1]

Category	Full Criminal & Civil	Full Criminal Official Acts Civil	Full Criminal No Civil	Official Acts[2]
United Nations				
Diplomats[4]	1,570			
Family Members	3,034			
Mission Employees				2,232
Secretariat Employees				4,468
Consulates				
Career Consuls				662
Honorary Consuls				8
Bilateral Consuls[3]				
China		58		
Family Members			34	
Hungary		3		
Family Members			7	
Poland		11		
Family Members			28	
Philippines		3		
Family Members			0	
Consular Employees				1,929
Bilateral Consular Employees[3]				
China		61		
Family Members			0	
Hungary A&T		7		
Family Members			7	
Poland				11
Philippines				82
Total	4,604	143	76	9,392

PERSONS ENTITLED TO IMMUNITY - OUTSIDE WASHINGTON AND NEW YORK CITY[1]

Category	Full Criminal & Civil	Full Criminal Official Acts Civil	Full Criminal No Civil	Official Acts[2]
Consular Officers				
Career Consuls				1,197
Honorary Consuls				1,067
Bilateral Consuls[3]				
USSR		8		
Family Members			11	
China		90		
Family Members			52	
Poland		18		
Family Members			28	
Philippines		31		
Family Members			75	
Consular Employees				2,762
Bilateral Consular Employees[3]				
USSR		14		
Family Members			18	
China		55		
Family Members			1	
Poland				13
Philippines				411
F-16 Program[5]		43		
Family Members			103	
Int'l Boundary & Water Commission[6]				
Commissioner	1			
Family Members	3			
Int'l Organizations Employees				193
Total:	4	259	288	5,643

Washington, D.C.

20,525 with full criminal immunity.

New York City

4,823 with full criminal immunity.

Outside Washington and New York City

551 with full criminal immunity.

Countrywide

25,899 with full criminal immunity.
56,448 with some form of immunity.

FOOTNOTES

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[1] As of August 12, 1987.

[2] Official acts immunity for criminal or civil matters, unlike full criminal or civil immunity, is not a bar to jurisdiction. It must be asserted in court and is subject to judicial determination.

[3] Bilateral agreements were concluded with these countries, USSR 7/13/68 and 10/31/86, Poland 5/31/72, Hungary 9/19/72, China 2/19/82, Philippines 12/6/82, providing on a reciprocal basis a higher degree of immunity for officials of both the U.S. and the sending state.

[4] Includes 55 Secretariat diplomats.

[5] On June 19, 1975, the Secretary of Defense signed a Memorandum of Understanding for joint development and production of F-16 aircraft with Belgium, Denmark, the Netherlands, and Norway, providing on a reciprocal basis immunity for officials of both the U.S. and the sending state assigned to F-16 management activities.

[6] The Treaty between the United States and Mexico Relating to the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, entered into force November 8, 1945, and accords diplomatic status to the Commissioner, two principal engineers, a legal adviser and a secretary for both Mexico and the United States.

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Incidents (U.S.)

Q. -- How many criminal cases during the last five years have been dismissed in the United States because diplomats have claimed immunity from criminal prosecution? How many of these cases have involved family members of diplomats? How many cases involved staff members?

A. The Department's records reflect that from August 1, 1982 to August 5, 1987, there were 171 allegations of criminal misconduct by persons covered with criminal immunity. Of these there were 49 allegations of criminal misconduct by diplomats (including those at the UN) in the United States where prosecution was not possible because of immunity. 78 of such cases involved family members of diplomats; 28 involved members of the administrative and technical staff in Washington; 16 involved family members of the administrative and technical staff in Washington. The above statistics do not include traffic offenses. While the Department is in the initial stages of developing a comprehensive point system, the Department does not receive from all jurisdictions notices of traffic violations.

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Incidents (U.S.)

Q. -- How many civil cases have been dismissed in the United States during the last five years because of diplomatic immunity?

A. Over the past five years 251 cases where immunity was a bar to civil action have been referred to the Department and remain pending.

Incidents (U.S.)

Q. What recourse do individuals (or the U.S. Government) have in such cases?

A. (1) Civil Cases:

There exists precedent for a foreign government to waive its diplomat's immunity, such waiver being expressly limited to the civil claim in question. If immunity is waived, the matter can then be adjudicated in the courts in normal fashion.

Depending upon the circumstances of the individual case, a number of other avenues of recourse potentially are open to an American citizen who has sustained physical injury or monetary damage arising from an incident involving an individual immune from local jurisdiction.

In automobile accidents, the victim may bring a direct action against the company that insured the automobile involved in the accident, pursuant to 28 U.S.C. 1364. All missions, members of missions, and family members have been required to carry liability insurance on their automobiles since June 1, 1979.

In other civil cases, aggrieved citizens or firms may file a written claim with the Department. The Department works with the chief of mission to secure settlement of the dispute. Reference of the matter to the appropriate chief of mission frequently causes the member of the mission to settle.

In some cases the Department may consider that the circumstances warrant an effort to induce the foreign government of the diplomat or employee whose action generated the claim to make a suitable ex gratia payment, that is, one based on compassionate grounds and implying no acknowledgment of legal liability on the part of that government.

In some circumstances, a victim may be able to bring suit against a foreign government under the Foreign Sovereign Immunities Act of 1976. This is discussed in response to the Committee's specific question regarding the Act, which is answered further in this submission.

(2) Criminal Cases

There are several steps available in criminal cases where diplomatic immunity is a bar to prosecution. All require that the local police pursue an investigation of every case to the fullest extent possible and build up a case file as they would on any other case; that the local authorities are reminded by the State Department's liaison with police that, notwithstanding the claim or existence of diplomatic immunity, they can and should charge the individual with the offense and take whatever other formal and legal measures are applicable and retain all documents on the record; and that a copy of the police report is promptly furnished to the Department.

The first step which the Department can take upon receipt of the police report is to request of the chief of mission a waiver of the offender's immunity. While waivers are not granted in every case, when they are, the case is prosecuted in the normal manner.

If waiver of immunity is refused, the Department may request the immediate removal of the offender or order his/her expulsion. If the offender is entitled to immunity as a family member, the Department may in addition to requesting the immediate removal of the offender order the expulsion of the member of the mission from whom immunity is derived.

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The Department also may require that the embassy deliver the individual's passport for cancellation of the American visa. The Visa Office upon notification places the individual's name in its worldwide lookout system and informs the Immigration and Naturalization Service of the name and offense to ensure that such individuals do not return without review by appropriate United States authorities.

Incidents (Foreign)

Q. -- How many criminal cases during the last five years have been dismissed because U.S. diplomats have claimed immunity from criminal prosecution? How many of these cases have involved family members of U.S. diplomats? How many cases involved U.S. staff members?

A. In order to respond to this question fully, the Department is querying each of its posts to obtain this information. Accordingly, the answer to this question will be provided to the Committee as soon as the Department receives such information.

Q. -- How many civil cases have been dismissed abroad during the last five years because of U.S. diplomatic immunity?

A. In order to respond to this question fully, the Department is querying each of its posts to obtain this information. Accordingly, the answer to this question will be provided to the Committee as soon as the Department receives such information.

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REVISED 9/21/87

Diplomatic Relations Act

The Diplomatic Relations Act of 1978 was intended to bring domestic law regarding diplomatic privileges and immunities in line with the 1961 Vienna Convention on Diplomatic Relations. In accord with this general purpose, the Act made a number of changes which significantly affect the law pertaining to diplomatic immunity. First, it repealed the outmoded 1790 U.S. law which granted to all foreign nationals employed by diplomatic missions complete immunity from criminal, civil, and administrative process. Second, it replaced this broad immunity with varying degrees of immunity according to the function of the person within the mission. Third, it required diplomats to carry liability insurance for motor vehicles they operated in this country. Fourth, it created a federal right of direct action against insurance companies which insure the automobiles, airplanes, and vessels of diplomats.

Q. -- Has the Diplomatic Relations Act of 1978 had an impact in the number of persons immune from legal process in the United States?

A. I. Diplomatic Agents

The Diplomatic Relations Act primarily affected staff members of embassies. However, it has had a limiting effect on the immunity of diplomats and their family members, who until the 1790 statute was repealed by the 1978 Act enjoyed full immunity from criminal, civil, and administrative jurisdiction. Since repeal of the statute by the 1978 legislation this immunity has been somewhat abridged, in that diplomats are now not immune from civil and administrative jurisdiction in connection with (a) real property transactions not conducted on behalf of the mission; (b) any role they may play as executor for or heir to an estate being distributed in the host country; or (c) the performance of professional or commercial activities outside the scope of their official duties. Family members of diplomats who are part of their households, and who are not citizens of the United States, are entitled to the same immunity as their principal.

It is not possible to state the number of diplomats whose immunity from civil and administrative jurisdiction is abridged by the three excepted areas of activity, since civil actions in these areas normally would not come to the Department's attention.

II. Administrative and Technical Staff

Formerly, members of the administrative and technical staff of a diplomatic mission enjoyed complete immunity from criminal, civil and administrative jurisdiction. However, ratification of the Vienna Convention and passage of the 1978 statute withdrew from such members their immunity from civil and administrative jurisdiction except with respect to acts performed in the course of their duties. The most recent tabulation gives 3,967 as the number of persons who have lost this significant degree of immunity.

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Family members of members of the administrative and technical staff had no immunity under the 1790 statute. This changed, however, with the entry into force of the Vienna Convention on December 13, 1972. Since both the statute and the treaty were the supreme law of the land, it was determined that effect must be given to the one providing broader immunities where there was a difference in the scope of immunities conferred by the two. Accordingly, by memorandum of February 27, 1973, police authorities in the Washington metropolitan area were informed that complete immunity from criminal jurisdiction now extended to family members of the administrative and technical staff of the diplomatic mission who formed part of the staff member's household, provided that the family member was not an American citizen or a permanent resident of the United States.

The immunity from civil and administrative jurisdiction which under Vienna staff members may assert for acts performed in the course of their duties is of course not available to family members, as they do not perform official duties.

In short, since they had already gained criminal immunity through entry into force of the Vienna Convention in 1972, the Diplomatic Relations Act of 1978 had no impact on family members of members of the administrative and technical staff.

III. Service Staff

Members of the service staff of the mission who were not American citizens or permanent residents had blanket immunity from criminal, civil and administrative jurisdiction under the old regime. Since passage of the 1978 Act, however, service staff members who are foreign nationals are entitled to immunity only with respect to acts performed in the course of their duties. They are not immune from civil process or from arrest, detention, and prosecution. Whether acts are those with respect to which the individual is immune is a matter for court determination based upon a review of the facts in each case. There are 1,020 persons in the service staff category according to the latest tabulation. Family members of the service staff have no immunity.

IV. Domestic Servants

Domestic servants under the 1790 statute had complete immunity from criminal, civil and administrative jurisdiction: they now have no immunity. By the latest count there are 1,241 persons in this category.

Diplomatic Relations Act

Q. -- Have foreign mission personnel complied with the Act's compulsory liability insurance features?

A. Yes. Foreign missions and their personnel are required to maintain liability insurance coverage on their vehicles. The mission member must demonstrate to the Department that the vehicle meets the Department's insurance requirements before federal plates are issued. The Department will reject any application from a foreign mission member for the registration of a motor vehicle which does not meet the Department's strict requirements on insurance coverage.

The Department has just completed an extensive review of motor vehicle insurance coverage maintained by members of foreign missions. The project involved examining the insurance records of over 13,000 vehicles registered with the Department. The missions were required to supply and certify to the Department that all vehicles were insured at the required levels. In addition, each mission has been placed on an annual verification reporting schedule under which the head of the mission is required to report annually to the Office of Foreign Missions (OFM), in accordance with the 1983 amendment of the Foreign Missions Act which requires that all vehicles are properly insured. Amendment requires that all vehicles maintain the following liability coverage: $100,000 per person, $300,000 per accident, and $100,000 property damage, or $300,000 combined single limit on all vehicles registered.

Diplomatic Relations Act

Q. -- Have insurance companies complained to the Department or have they cited any cases where the direct action provisions of the Act have caused them problems?

A. The Department is not aware of any significant problems experienced by the insurance companies as a result of the direct action provisions of the Act.

Diplomatic Relations Act

Q. -- Have insurance rates for diplomats undergone an above-average increase?

A. The Department is not aware of diplomats being assessed higher premiums based on their status. The insurance industry on the whole has been faced with skyrocketing costs and has compensated for these by increasing premiums. The Department, however, has no reason to believe that insurance companies have levied higher premium increases on diplomats. Some diplomats may, because of the absence of a verifiable prior driving record, be classified by insurers as representing a higher risk.

Diplomatic Relations Act

Q. -- Have insurance companies refused to provide diplomats with auto liability insurance?

A. Insurance companies have on occasion turned down requests from a member of the diplomatic community for coverage for a number of reasons, including, but not limited to: poor driving history, no valid U.S. operator's permit, etc. The Department has not encountered situations in which the diplomat has been denied automobile insurance because of his/her status.

Privileges and Immunities

A principal purpose of replacing the outmoded U.S. law with the Convention was to bring domestic law into accord with the latter's more realistic and functional approach to granting privileges and immunities. Privileges and immunities vary with the needs of persons in the mission to carry on affairs of state in a representative capacity. The hearings on the 1978 Act disclosed that there were about 23,000 people in New York and Washington, D.C., who in 1977 had diplomatic immunity. It was expected that only approximately 12,500 would retain civil immunity for unofficial acts under the Diplomatic Relations Act.

Q. -- Has the Act reduced the number of people who are covered by full civil immunity? Does the Department have current figures comparing and contrasting pre- and post-Act developments in this regard?

A. The Department considers it important at the outset to correct the erroneous impression that "the hearings on the 1978 Act disclosed that there were about 23,000 people in New York and Washington, D.C., who in 1977 had diplomatic immunity." Part I of the statistical tabulation which the Department supplied in response to a request made by Senator Sarbanes in the May 24, 1978, Senate Foreign Relations Committee hearing on H.R. 7819 gave the figures on "Persons Entitled to Diplomatic Immunity Under Current

Legal Regime Consisting of Both 22 U.S.C. 252-254 and the Vienna Convention on Diplomatic Relations." That tabulation showed 17,405 as the total number of persons with "Full immunity" and 7,192 in a separate column headed "Immunity only from criminal prosecution." The figure in the second column represented the family members of members of the administrative and technical staff of diplomatic missions, who had no immunity at all prior to the entry into force of the Vienna Convention in 1972 but had gained criminal immunity through that event.

The Act has indeed reduced the number of persons entitled to full civil immunity. The figures below show the categories and numbers of persons who possessed full civil immunity under the 1790 Statute prior to enactment of the 1978 Act and of those who no longer are entitled to full civil immunity. Diplomats and their family members are not included in the latter category, although pursuant to Article 31, paragraph 1, and Article 37, paragraph 1, of the Vienna Convention they no longer enjoy immunity with respect to three limited classes of civil actions.

	CIVIL IMMUNITY	
	(Had Full)	(No Longer Have Full)
	1978	1987
Diplomats	3,915	
Diplomats' Family Members	9,734	
Administrative and Technical Staff	2,877	3,967
Service Staff	273	1,020
Domestic Servants	606	1,241
TOTALS:	17,405	6,341

Senate Foreign Relations Committee
Questions of July 31, 1987
Ref: Hearing on S. 1437

Privileges and Immunities

Q. -- Did the Department notify mission heads of the changed U.S. law and policy regarding diplomatic privileges and immunities?

A. Chiefs of Mission were notified of the changes by the following communications, copies of which are attached:

-- The Department of State sent out copies of the Diplomatic Relations Act to the Chiefs of Mission on October 31, 1978. The October note also explained the changes that would result from the passage of this new Act.

-- The Department of State invited the Chiefs of Mission to a symposium on diplomatic privileges and immunities which was held December 15, 1978, two weeks before the Diplomatic Relations Act took effect. A question and answer session on the changes in diplomatic immunity was provided.

-- On December 18, 1978, a diplomatic note was sent to the Chiefs of Mission explaining the Department's procedure for assigning employees into the Administrative and Technical or Service Staff category.

Senate Foreign Relations Committee
Questions of July 31, 1987
Ref: Hearing on S. 1437

- On January 15, 1979, two diplomatic notes were sent to the Missions. One detailed the District of Columbia's passage of the Traffic Adjudication Act in conjunction with the Diplomatic Relations Act. The other note provided the Chiefs of Mission with a copy of "Guidance to Law Enforcement Authorities in the Metropolitan Washington Area on Diplomatic Immunity and Related Matters." This new brochure communicated to local law enforcement officials the substantive changes in diplomatic immunity brought about by the Diplomatic Relations Act.

- On February 16, 1979, the Department asked for the return of ID cards issued before the passage of the Diplomatic Relations Act. New identity cards were provided to persons eligible under the new law.

- Finally, on May 22, 1979, the Department reminded the Chiefs of Mission of the requirement for all official vehicles to have insurance before they are registered with the Department.

Attachments: Diplomatic Notes.

ATTACHMENT

DIPLOMATIC NOTE

10/31/78 Diplomatic Relations Act

The Secretary of State presents his compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to invite their attention to the recent enactment of United States legislation affecting the privileges and immunities to be accorded in the United States to diplomatic missions and the members thereof.

The Diplomatic Relations Act (the Act), which complements the Vienna Convention on Diplomatic Relations, was enacted on September 30, and will become effective on December 29, 1978. A copy of the Act is enclosed. This note is intended to familiarize the diplomatic missions with the provisions of the new Act and to describe the changes in United States law and practice resulting from its enactment.

During the period prior to the effective date of the Act there will be no departure from past practice respecting recognition by the Department of State of immunity for diplomatic mission personnel, members of their families, and private household servants whom the United States has considered to be entitled to full diplomatic immunity under prevailing law, nor any change in the manner in which the Department of State has certified that immunity in appropriate cases.

Following is a summary of the Act.

Title of the Act

Section 1 states that the Act may be cited as the "Diplomatic Relations Act". This section merely establishes an official name in the interest of facilitating convenient and uniform reference to the statute. For purposes of legal citation to the United States Statutes at Large and the United States Code, the text of the Act will be found at 92 Stat. 808, and in 22 U.S.C. §§254a - 254e and 28 U.S.C. §1364, respectively.

Definitions

Section 2 contains four definitions of terms used in other sections of the Act. These terms are also used in this note with the same meanings.

"Members of a mission" is defined as having the same meaning as is given that term by Article 1 of the Vienna Convention on Diplomatic Relations.

"Family" is defined as the members of the family of a member of a mission's diplomatic staff or administrative and technical staff who form a part of the mission member's household, who are not nationals of the United States, and (in the case of administrative and technical staff) are not permanent residents. This definition identifies family members who are entitled to privileges and immunities. It is based upon and is consistent with Article 37 of the Vienna Convention on Diplomatic Relations.

"Mission" is defined so as to include not only missions within the meaning of the Vienna Convention, but also other missions representing governments which are accorded diplomatic privileges and immunities pursuant to law. This definition makes clear that persons such as representatives of members of the United Nations or of the Council of the Organization of American States, will be accorded the same privileges and immunities as diplomats accredited to the United States.

"Vienna Convention" is defined as the Vienna Convention on Diplomatic Relations of April 18, 1961. This treaty, which is in force for 122 nations, including the United States, is the accepted international standard for diplomatic privileges and immunities.

Establishment of the Vienna Convention as United States Law on Diplomatic Privileges and Immunities

Section 3 is the central provision of the Act. It repeals laws originally enacted in 1790, under which all members of a mission, and the families and private household servants of members of the diplomatic staff, have enjoyed complete immunity from the criminal, civil and administrative jurisdiction of the United States. The Act does not itself create any new scope of immunity. Rather, by virtue of the repeal of the laws formerly in force, the Vienna Convention will be the legal basis for, and will determine the scope of, diplomatic immunity to be accorded to personnel of sending States which are Parties to the Vienna Convention.

Section 3 also provides in the case of a sending State which is not a Party to the Vienna Convention that the members of the mission, their families and diplomatic couriers shall enjoy in the United States the privileges and immunities specified in the Vienna Convention. This provision reflects the view that according the privileges and immunities specified in the Vienna Convention will fulfill the obligations of the United States under customary international law to those sending States which are not Parties to the Vienna Convention.

Thus, aside from any special bilateral agreements which the United States may conclude under Section 4 of the Act, as described below, members of all diplomatic missions and their families will receive equal treatment respecting privileges and immunities in accordance with the Vienna Convention, whether or not the Vienna Convention is in force between the United States and the sending State.

Because the Vienna Convention distinguishes among categories of mission personnel in determining the scope of immunity, it will be especially important that all missions provide current, accurate and complete notifications to the Department of State regarding arrivals, departures and changes in status of all members of the mission and their families. Information with respect to notification requirements and procedures was furnished to missions by the Secretary of State's circular note dated October 2, 1978.

Authority to Extend More Favorable or Less Favorable Treatment.

Section 4 authorizes the United States, on the basis of reciprocity, to accord more favorable or less favorable treatment than is provided under the Vienna Convention for members of a mission, their families, and diplomatic couriers. For example, this section will permit continued duty-free entry of personal effects after first arrival by members of a mission's administrative and technical staff and service staff (which is more favorable treatment than is provided under Article 37(2) of the Vienna Convention), provided that reciprocal treatment is provided by the sending State.

Dismissal of Actions Against Individuals Entitled to Immunity.

Section 5 provides that a lawsuit in a court in the United States against a person who is entitled to diplomatic immunity shall be dismissed. The individual's immunity may be established upon "motion" or "suggestion" by or on behalf of the individual. A "motion" in United States law is a formal application to the court by the interested party, usually through an attorney. A "suggestion" is a formal communication to the court by the United States Government of information relevant to the case.

The Department of State will continue to provide to the courts certifications of an individual's status, and the scope of immunity resulting from that status under the Vienna Convention. In many cases, such a certification alone would be sufficient to result in a dismissal of the lawsuit. However, because of the different scope of immunity granted under the Vienna Convention to different categories of the members of a mission's staff (see Articles 31 and 37 of the Vienna Convention) certifications of status alone will no longer dispose of all cases. Disputed questions of fact will sometimes have to be resolved before a final determination can be made as to whether immunity is applicable in a particular case.

For example, in the case of a civil action brought against a member of a mission's administrative and technical staff for an alleged breach of contract, if it is not clear whether the contract was entered into in the course of the member's duties, the court may require evidence on this factual issue before deciding whether the action should be dismissed. While the Department of State will certify to the court in such a case that the individual is a member of the mission's administrative and technical staff and, therefore, is entitled to immunity for acts done in the course of his or her duties, the Department will not normally communicate with the court concerning whether the particular act on which the proceeding is based was or was not done in the course of official duties.

Under the United States' judicial system, the courts decide questions as to whether immunity applicable only to an individual's official acts is available in a particular case. Experience gained in cases involving consular officers, employees of international organizations, and others whose immunity is limited to their official acts has shown that judicial resolution of these questions is fair and not unduly burdensome.

Proof of facts that would establish an individual's entitlement to immunity will not necessarily require the individual's personal appearance before a court. This section states explicitly that a motion or suggestion may be made by a representative on behalf of the individual claiming immunity.

Requirement for Liability Insurance

Section 6 requires that missions, members of missions, their families, and senior officials of the United Nations who are entitled to diplomatic immunity must maintain liability insurance against risks arising from their operation of motor vehicles, vessels or aircraft. This requirement will be explained in detail in regulations which will be issued soon. Such a requirement is consistent with widespread State practice regarding adequate insurance coverage for diplomatic missions and personnel. Further information on this subject will be provided to missions.

Direct Actions Against Insurers

Section 7 provides that actions may be brought in the district courts of the United States against the insurer of an individual who is required under Section 6 to maintain liability insurance. The purpose of this section is to prevent immunity from impairing the timely resolution of just claims, arising from the operation of motor vehicles, vessels and aircraft, and, when such claims cannot be amicably resolved, to provide access to the courts in a manner which is consistent with immunity. Together with section 6 of the Act, this section assures an effective remedy in automobile accident cases for individuals claiming personal injury or property damage caused by members of missions and their families.

Federal Jurisdiction

Section 8 provides that the district courts of the United States rather than State or local courts shall have jurisdiction over suits against members of a mission or their families. Of course, any such suit which is barred by immunity must be dismissed, as required by Section 5. This section assures that suits against members of missions and their families can be instituted only in federal courts and that those courts will decide whether immunity prevents the suit.

Effective Date

Section 9 states that the Act shall take effect ninety days from the date of its enactment. Since the Act was enacted on September 30, 1978, it will take effect on December 29, 1978.

Further information on this new law and on procedures with respect to privileges and immunities will be communicated to the missions in the near future.

Department of State,
Washington, October 31, 1978.

ATTACHMENT

DIPLOMATIC NOTE

12/7/78 Symposium on Diplomatic Privileges

The Secretary of State presents his compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to cordially invite them, or their representatives, to attend a symposium on diplomatic privileges and immunities which will be held at 10:00 a.m. on Friday, December 15, in the Dean Acheson Auditorium of the Department of State.

The purpose of the symposium is to acquaint members of the diplomatic community more fully with the purposes and provisions of the recently enacted Diplomatic Relations Act, as well as with certain procedures to be followed in the implementation of the new law. A note designed to give the diplomatic missions an overview of the provisions of the Act was circularized on October 31, 1978.

A panel consisting of representatives of the Departments of State and Justice from the legal and protocol fields will discuss in particular (1) the scope of immunity accorded the various classes of mission members under the Vienna Convention on Diplomatic Relations, (2) changes in notification requirements, (3) the practice to be followed in asserting immunity in United States courts, and (4) motor vehicle liability insurance requirements. There will be opportunities for questions to be addressed to the panel after the presentation of each subject.

For their convenience the Chiefs of Mission or their representatives should enter the Department of State at the Auditorium entrance on 23rd Street, N.W. Any questions regarding these arrangements should be directed to the Office of Protocol, telephone 632-7984.

Department of State,
Washington, December 7, 1978.

DIPLOMATIC NOTE

ATTACHMENT

12/18/78

Procedure for Assigning Employees into the Administrative and Technical or Service Staff Category

The Secretary of State presents his compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to amplify by this note that part of the Department's circular diplomatic note of October 2, 1978, which deals with the registration of nondiplomatic personnel of the missions with the Office of Protocol by means of revised Form DS-394.

On December 29, 1978, the Diplomatic Relations Act will go into effect, thereby making the Vienna Convention on Diplomatic Relations the basis for determining the privileges and immunities to which each member of the staff of a mission will be entitled, according to the personnel category, of those established by the Convention, into which the member falls. Thus it will become necessary for the Department of State to place each nondiplomatic staff member under one of the two relevant classifications, Administrative and Technical Staff and Service Staff.

Missions are requested to refrain henceforth from characterizing any employee as simply a member of either of the aforementioned Staffs. Instead they are requested to provide in the proper space on the Form DS-394, or on the pages from the Employees of Diplomatic Missions list sent to them for updating, the most accurate and descriptive job title that currently applies to the duties performed. This action must be taken prior to the publication of the next list. The Office of Protocol will then assign each individual to the appropriate functional category.

Employees such as administrative officers or assistants, security officers, purchasing agents, budget and fiscal technicians, archivists, cryptographers, receptionists, secretaries, stenographers, typists, clerks, couriers, messengers and guards will be placed in the category of Administrative and Technical Staff. Under the Service Staff category will be placed chauffeurs, drivers, servants working in the missions themselves, and all other employees performing domestic duties in the mission.

The Department of State will appreciate the cooperation of all missions in reviewing and correcting to the extent necessary the pages from the Employees of Diplomatic Missions list being sent to them shortly, in order that the January issue of the list may properly reflect the functional classification of each employee in accordance with the criteria indicated.

In closing, the Department informs the missions that, as of December 29, 1978, private servants will no longer enjoy diplomatic immunity, and their names will therefore not be eligible for inclusion in the list of Employees of Diplomatic Missions.

Department of State,
Washington, December 18, 1978.

DIPLOMATIC NOTE ATTACHMENT

1/15/79 — Traffic Adjudication Act

The Chief of Protocol presents her compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to inform them of the enactment by the Council of the District of Columbia of the District of Columbia Traffic Adjudication Act of 1978. The purpose of this legislation is to remove minor traffic offenses from the criminal code and to provide for administrative adjudication of such offenses within the municipality's Department of Transportation. The Act also provides for civilian enforcement of parking violations and minor traffic offenses in the interest of establishing a more uniform and equitable disposition of such infractions. The civilian cadre of enforcers has been exercising its responsibilities since October 1978. Implementation of the decriminalization and administrative adjudication provisions of the Act is due to commence on January 29, 1979.

The Traffic Adjudication Act of 1978, combined with the Diplomatic Relations Act which took effect on December 29, 1978, will provide the municipal government of the District of Columbia with the legal authority to seek collection of fines from all foreign mission personnel below the rank of diplomat who have incurred tickets for noncriminal traffic infractions, since these persons, as well as their family members, do not enjoy blanket immunity from civil and administrative jurisdiction.

Enclosed for the information of the Mission is the proposed plan of administrative adjudication which has been furnished by the District of Columbia Department of Transportation.

Illegal parking in the District of Columbia, as in all other large cities, is a major safety, transportation, and economic problem. Caused in part by a 67 per cent increase in automobile use since 1960, illegal parking has become so prevalent in the city that an estimated 25 million violations of this nature occur each year. Municipal authorities are determined to substantially reduce illegal parking by improving the traffic enforcement system and changing the manner of adjudicating minor traffic and parking offenses.

Foreign mission personnel will inevitably be affected by the more aggressive approach towards parking enforcement which local authorities have adopted, but they will also share in the benefit expected to result from better traffic movement and safer streets for motorists and pedestrians in the District of Columbia.

Enclosure:

As stated.

Department of State,
Washington, January 15, 1979.

ATTACHMENT

DIPLOMATIC NOTE

1/15/79 — Guidance to Law Enforcement Authorities in the Metropolitan Washington Area on Diplomatic Immunity and Related Matters

The Chief of Protocol presents her compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to transmit for their information a copy of a recent issuance by the Department of State, Office of the Chief of Protocol, entitled "Guidance to Law Enforcement Authorities in the Metropolitan Washington Area on Diplomatic Immunity and Related Matters."

The Department is bringing this paper to the attention of the Chiefs of Mission in the belief that they will be interested in how it has communicated to local law enforcement officials the substantive changes in United States domestic law on the subject of immunity which have been brought about by the Diplomatic Relations Act. The enclosures referred to in the document are not included in this transmittal, since copies are already in the possession of all diplomatic missions.

Enclosure:
As stated.

Department of State,
Washington, January 15, 1979.

Guidance to Law Enforcement Authorities in the Metropolitan Washington Area on Diplomatic Immunity and Related Matters

January 1, 1979

I. Statutory Change in U.S. Law on Diplomatic Immunity

Attached is a copy of Public Law 95-393, the Diplomatic Relations Act, which the President signed into law on September 30, 1978, and which by its terms went into effect on December 29, 1978, together with a copy of the 1961 Vienna Convention on Diplomatic Relations. The changes brought about by the Diplomatic Relations Act of greatest interest to law enforcement authorities are as follows:

(1) Sections 4063 through 4066 of the Revised Statutes of the United States (22 U.S.C. 252-254), which have constituted the basic law on diplomatic immunity in this country since 1790, are repealed.

(2) The Vienna Convention on Diplomatic Relations, a multilateral treaty to which the United States has been a party since December 13, 1972, has been established as the fundamental law defining the privileges and immunities to be accorded to foreign embassies and eligible members of their staffs, regardless of whether the sending State has ratified the Convention.

II. Summary of Repealed Statute

Under the former governing law, 22 U.S.C. 252-254, complete immunity from criminal, civil, and administrative jurisdiction was accorded to all foreign nationals, not permanent residents, and assigned the proper nonimmigrant visa status, in the employ of an embassy in Washington. That immunity also extended to private servants in the household of a diplomat, provided they were in proper visa status. Criminal penalties were prescribed for any person instituting a "writ or process" against a person enjoying diplomatic immunity, as well as for any officer of the law concerned in executing it, though there is no record of enforcement of this section of the statute in modern times.

III. Overview of Vienna Convention on Diplomatic Relation

The Vienna Convention on Diplomatic Relations of 1961 is in large measure an embodiment of current customary international law on the subject of diplomatic privileges and immunities. However, its application as the basic standard for privileges and immunities in the United States does create some important innovation One significant innovation is the classification of diplomatic personnel into three categories to which different degrees of immunity are assigned. Thus, the effect of displacement of the standard set by the 1790 statute by that laid down by the Vienna Convention is to limit substantially the number of persons who enjoy full diplomatic immunity as it has been known in the past. At the same time, it should be kept in mind by all who are involved in law enforcement activity that the great majority of persons employed in the embassies, along with their family members, do retain immunity from criminal jurisdiction.

IV. Pertinent Provisions of Vienna Convention

For convenient reference the following is a summary of the immunity status that now attaches to persons in each of the staff categories established by the Vienna Convention on Diplomatic Relations:

A. Diplomatic Agents

This is the term used in the Convention for what we have known as, simply, diplomats; it include the head of the mission, be he an ambassador or charge d'affaires, and all members of the diplomatic staff of the mission. These are the persons, insofar as those attached to embassies in Washington are concerned, who carry Diplomatic Identification Cards issued by the Department of State and whose names and diplomatic titles are carried in the "Diplomatic List" ("Blue Book") which the Department publishes four times a year. By special statutes and agreements, however, the term also includes members of the Delegation of the Commission of the European Communities; the permanent representatives of country missions to the Organization of American States in Washington and to the United Nations in New York; the senior officers on the staffs of missions to both organizations; and approximately fifty senior officials of the United Nations itself.

All persons with diplomatic status and their spouses are issued a diplomatic identification card by the Department of State. From the beginning of 1979 the old ID card, which carried the text of the repealed statute on diplomatic immunity, will be replaced for newly assigned diplomats and their spouses, and gradually for those previously issued the now-obsolete card, by a revised credentia in which Articles 29 and 30 and the first three paragraphs of Article 31 of the Vienna Convention on Diplomatic Relations are quoted in full. For convenient reference those provisions are here reproduced:

Article 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Article 30

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability.

Article 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) a real action relating to private immovabl property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sendi State;

(c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under sub-paragraphs (a), (b), and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

The members of a diplomat's family forming part of his household, unless they are United States citizens, enjoy the same privileges and immunities as the Convention confers on the diplomat (cf. Article 37). The entitlement of spouses to such privileges and immunities can normally be established by the ID card referred to above and by their inclusion in the periodically published "Diplomatic List". Other family members are not issued ID cards, but unmarried daughters between the ages of 18 and 26 are also included in the "Diplomatic List", and dependent children between those ages are entitled to and do, upon request by the diplomat's embassy, receive a tax exemption card from the Department of State.

B. Nondiplomatic Members of the Staff of a Diplomatic Mission

Definitions of terms given in Article 1(f) and (g) of the Convention divide the nondiplomatic staff of the mission into two categories, (a) the Administrative and Technical Staff and (b) the Service Staff. The Convention establishes different privileges and immunities for the members of each category. The Department of State will place in the first category employees notified to it with such job titles as administrative officers or assistants, security officers, purchasing agents, budget and fiscal technicians, archivists, cryptographers, receptionists, secretaries, stenographers, typists, clerks, courier messengers, and guards. Under the Service Staff heading will be placed chauffeurs, drivers, servants working in the mission, and all other employees performing domestic duties in the mission. (The term "mission" embraces the premises not only of the chancery, in which the varied work of the missio is conducted, but also the residence of the head of the mission). Future issues of the Department's periodic publication, "Employees of Diplomatic Missions" (commonly referred to as the "White List") will designate the group into which each member of the nondiplomatic staff falls.

I. Immunity Status of Members of the Administrative and Technical Staff

Article 37, paragraph 2, of the Vienna Convention extends to members of the Administrative and Technical Staff of the mission and to members of their families forming part of their respective households (if they are not citizens or permanent residents of the United States) a number of the privileges and immuniti that the Convention accords to diplomats.

Specifically, these employees and their family members enjoy (a) the inviolability of the person provided by Article 29; (b) the inviolability of their private residence, paper and correspondence provided by Article 30; and the immunity from criminal jurisdiction provided by Article 31. However, the cited paragraph of Article 37 stipulates that the immunity from civil and administrative jurisdic which employees in this category shall enjoy "shall not extend to acts performed outside th course of their duties." Under this formulati family members who are not also employees of the mission in the Administrative and Technica Staff or the Service Staff (see below) can hav no claim to immunity from civil and administra jurisdiction, since they have no duties with the mission.

While matters in the area of civil and administrative jurisdiction would not normally come before law enforcement authorities, the Department of State notes that it is both its and that of the Department of Justice that the question of whether a given act is one perform within or outside the course of an employee's duties in the context of the immunity provisio of the Vienna Convention is one for court determination.

2. Immunity Status of Members of the Service Staff

Pursuant to paragraph 3, Article 37 of the Convention, members of the Service Staff o the mission, not citizens or permanent resident of the United States, shall enjoy immunity only in respect of acts performed in the cours of their duties. Thus they have no blanket immunity from criminal jurisdiction, and any claim to immunity which might be raised on the ground that the act complained of was one performed in the course of the employee's duti would, as noted above, be one for court determination. As before, family members livi in the household have no claim to immunity.

C. Status of Private Servants

Article 1(h) of the Vienna Convention defines a "private servant" as "a person who is in the domestic service of a member of the mission and who is not an employee of the sending State." Under Article 37, paragraph 4, of the Convention such persons, if they are not nationals of or permanently resident in the receiving State, are exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they do not qualify for privileges and immunities under the

Convention, and the United States Government does not recognize their entitlement to additional privileges or immunities. This represents a substantial change from the previous legal regime, in that private servants enjoyed full diplomatic immunity under 22 U.S.C. 252. Law enforcement officials should note, however, that the cited paragraph of Article 37 of the Convention does provide that "the receiving State must exercise its jurisdiction over those persons in such a mann as not to interfere unduly with the performance of the functions of the mission."

V. Verification of Status of Person for Whom Immunity is Claimed

In any situation in which a law enforcement official needs to establish entitlement to diplomatic immunity and the person asserting it cannot produce satisfactory evidence thereof, or the official wishes to verify that the employment from which the person's immunity or that of a family member derives is still valid, confirmation of the correct status can be obtaine through a telephone call to the appropriate Department of State office, as follows:

During regular hours, Office of Protocol

For diplomats - (202) 632-0291
For nondiplomatic employees - (202) 632-0605

After normal hours, all calls should be made to the Command Center of the Office of Security (202) 632-6173 or 632-2412.

VI. Incidents Involving Motor Vehicles Registered by Diplomatic Missions or Members Thereof or Operated by Members of Missions or Family Members

Section 6 of the Diplomatic Relations Act requi the President, by regulation, to establish liability insurance requirements "relating to risks arising from the operation in the United States of any motor vehicle, vessel, or aircraft" to be met by each mission, members of the mission and their families, and the senior officia of the United Nations who by special agreement with the UN enjoy the status of diplomats. The President has delegated this responsibility to the Secretary of State, and compulsory liability insurance provisions applicable to diplomatic missions and their personnel are being incorporated in the Department of State regulations published in the Code of Federal Regulations. In order to facilitate the just settlement of personal injury or property damage claims that may grow out of incidents involving vehicles owned by missions or their personnel, or operated by members of their staffs or their family members or others authorized by privileged owners to operate such vehicles, the Department earnestly requests the full cooperation of all law enforcement authorities in compiling and filing complete accident reports of such incidents, no matter how slight the injury or damage may seem.

VII. Request for Opportunity for Department of State to Review Proposed General Orders to Law Enforcement Officers Affecting the Diplomatic Community

In view of the complexity and sensitivity of the subject matter, the Department of State, Office of Protocol, would appreciate the opportunity to review and offer comments and suggestions on any revisions of current General Orders which area authorities propose to issue for the guidance of law enforcement officers in their dealings with situations and incidents involving diplomatic missions and their personnel.

Attachments:
1. Public Law 95-393, the Diplomatic Relations Act
2. 1961 Vienna Convention on Diplomatic Relations

Prepared by the Office of the Chief of Protocol,
Department of State.

ADDENDUM

Authority to Extend More Favorable or Less Favorable Treatment

Section 4 of the Diplomatic Relations Act authorizes the United States, on the basis of reciprocity, to accord more favorable or less favorable treatment than is provided under the Vienna Convention for members of a diplomatic mission, their families, and diplomatic couriers. The first bilateral agreement which the United States has concluded under this authority is that with the Union of Soviet Socialist Republics. Under this agreement, effective December 29, 1978, all members of the nondiplomatic staff, whether Administrative and Technical or Service, of the Soviet Embassy in Washington, and all members of their families who are nationals of the USSR, are accorded the privileges and immunities of diplomatic agents as specified in the 1961 Vienna Convention on Diplomatic Relations. Thus, even members of the Service Staff, if there should be any so designated, and members of their families of Soviet nationality, enjoy immunity from criminal jurisdiction, and all nondiplomatic employees of the Embassy and their family members who are nationals of the USSR are extended immunity from civil and administrative jurisdiction except for the three limited categories of civil actions in which diplomats themselves do not enjoy immunity under the Convention (see IV. A. above).

The Department of State foresees that some additional bilateral agreements may be concluded. In any such instance the Department will notify appropriate law enforcement authorities, and future issues of the Department's publication, "Employees of Diplomatic Missions," will reflect the changed immunity status of the employees of the mission affected by such an agreement.

DIPLOMATIC NOTE ATTACHMENT

2/16/79 Identification Cards

The Chief of Protocol presents her compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to refer to the recent passage of the Diplomatic Relations Act, which became effective on December 29, 1978.

This legislation has repealed the statute on which United States law on diplomatic immunity had largely been based and has replaced it with the applicable provisions of the 1961 Vienna Convention on Diplomatic Relations. All identification cards issued by the Department of State to diplomats and their spouses which contain the language of the repealed statute have thereby become obsolete and potentially misleading to law enforcement authorities to whom they might be shown. Accordingly the Department considers it advisable to replace such documents with new ones which accurately reflect the law now in force in the United States on the immunities of diplomats and members of their families.

To that end the missions are requested to submit to the Office of Protocol by note a list of all diplomatic officers and their spouses who have been issued old-style identification cards and should receive new ones. A properly identified photograph of each named person should accompany the list. Officers and spouses expected to leave the mission before June 1, 1979, should not be included in the list.

To avoid inconvenience to the diplomatic staffs of the missions, the diplomatic identification cards will be issued to approximately one-third of the missions each month. The missions are therefore requested to submit their listings and photographs according to the following schedule:

Afghanistan through Ghana - as soon as possible but not later than March 9, 1979; new cards will be ready for pick-up April 6, 1979;

Great Britain through Nigeria - as soon as possible after March 16, 1979 but not later than March 23, 1979; cards will be ready for pick-up April 20, 1979;

Norway through The Delegation of the Commission of the European Communities - as soon as possible after March 23, 1979 but not later than March 30, 1979; cards will be ready for pick-up April 27, 1979.

The Department requests that each mission designate one person to be responsible for picking up its new diplomatic identification cards. Return of the obsolete cards to the Office of Protocol after the replacements have been issued is also requested.

Department of State,
Washington, February 16, 1979

ATTACHMENT

DIPLOMATIC NOTE

5/22/79 Liability Insurance Requirements

The Chief of Protocol presents her compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to bring to their attention the enclosed copy of Department of State regulations establishing liability insurance requirements in accordance with the Diplomatic Relations Act of 1978.

The regulations were published in proposed form on December 6, 1978, and were circulated in that form under cover of the note of February 2, 1979, on the subject of the annual reregistration of automobiles. With some slight modification, they have now been issued in final form and will become effective on June 1, 1979. Accordingly, all missions, members of missions, and members of their families are responsible for seeing that the requirements of these regulations are met with respect to all motor vehicles, vessels, or aircraft owned or leased by them or otherwise furnished for ~~their use.~~ Those not already in compliance with this requirement must obtain the necessary insurance no later than June 1.

Each Chief of Mission shall, no later than July 1, submit to the Chief of Protocol a written statement certifying in accordance with Section 151.8 of the regulations that the mission, all members of the mission, and relevant family members have and will maintain the required insurance. A suggested format for these statements is enclosed. The statements must provide the indicated information to reflect that the required insurance is in effect for all mission members, including members of the service staff, who under the 1961 Vienna Convention on Diplomatic Relations are not entitled to waiver of motor vehicle registration fees. It is anticipated that subsequent periodic certifications will be required of Chiefs of Mission on an annual basis.

As of June 1, the Department of State will no longer endorse any application for diplomatic motor vehicle license plates or for waiver of registration fees without prior receipt of satisfactory evidence from the Chief of Mission or other duly authorized Mission official, as provided in Section 151.9, that the required insurance is in effect. That evidence shall be included in the customary diplomatic note and must, at a minimum, indicate the name of the concerned mission member, a description of the motor vehicle, the name of the insurance company, and the number of the insurance policy.

Section 151.11 requires each mission and each person subject to the Act to provide the Department of State with written notification of ownership, maintenance or other regular use of a vessel or aircraft in the United States. This notification, together with a copy of the applicable insurance policy, must be submitted to the Chief of Protocol not later than July 1, 1979. Subsequent notification shall be submitted on an annual basis and, in addition, within thirty days after the purchase of any vessel or aircraft or its lease for more than a temporary period.

Section 151.4 states that the motor vehicle insurance required under these regulations must provide not less than the minimum limits of liability specified by applicable local law. A table of the relevant minimum limits is enclosed. However, Section 151.5 recommends significantly higher limits in order to afford reasonable compensation to accident victims. The Department of State strongly urges adoption of that recommendation with respect to all vehicles of the mission, mission members, and their families.

The Department also emphasizes that members of missions are expected to respond to reasonable requests from insurance companies for cooperation under the terms of the insurance contract in the conduct of any defense against suits involving the contract, as indicated in Section 151.7.

The Department further requests that missions inform the Chief of Protocol in detail of any difficulties that may be encountered in obtaining insurance required by the new regulations, to the end that appropriate assistance may be extended.

The Department of State, in transmitting this note and its enclosures to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission, solicits the cooperation of all missions and their personnel in meeting the requirements for liability insurance imposed by the new regulations.

Enclosures:

(1) Regulations establishing liability insurance requirements

(2) Suggested format for certification by Chief of Mission of insurance in force

(3) Table of minimum limits of liability specified by applicable local law

Department of State,

Washington, May 22, 1979

DEPARTMENT OF STATE

22 CFR Part 151

[Dept. Reg. 108.777]

Compulsory Liability Insurance for Diplomatic Missions and Personnel

AGENCY: Department of State

ACTION: Final rule

SUMMARY: These regulations specify the insurance required under the Diplomatic Relations Act of all diplomatic missions, members of missions and their families and officials of the United Nations entitled to diplomatic immunity, including the limits of liability, and describe the evidence of insurance necessary before the Department of State endorses applications for diplomatic automobile license plates or exemptions from registration fees.

EFFECTIVE DATE: June 1, 1979.

FOR FURTHER INFORMATION CONTACT: David P. Stewart, Special Assistant to the Legal Adviser, Department of State, Washington, D.C. 20520, telephone 202-632-2149.

SUPPLEMENTARY INFORMATION: The Diplomatic Relations Act, Pub. L. 95-393, September 30, 1978 (22 U.S.C. 254a et seq., 28 U.S.C. 1364) ("the Act") became effective December 29, 1978. As of that date, previous statutes on diplomatic immunity dating from the eighteenth century (22 U.S.C. 252-254) were repealed and the privileges and immunities provisions of the 1961 Vienna Convention on Diplomatic Relations (23 UST 3227, 500 UNTS 95), were established as the United States law on diplomatic immunity.

Section 6 of the Act requires diplomatic missions, members of missions, their families, and senior officials of the United Nations who are entitled to diplomatic immunity to have and maintain liability insurance against risks arising from their operation of motor vehicles, vessels or aircraft. The President was directed to establish the requirements for this liability insurance by regulation. Executive Order 12101 (43 FR 54195) delegated to the Secretary of State the authority to prescribe these regulations.

On December 6, 1978, the Department of State published in the Federal Register a proposed regulation to implement these requirements (43 FR 57159). In response to that notice, the Department received three written comments. A public meeting to receive oral comments was held on February 5, 1979, at which one person testified.

One written comment expressed concern that the Act permits claimants to bring civil suits directly against the insurers of persons subject to the Act but deprives those insurers of the defenses that the insured is immune from suit, is an indispensable party or, in the absence of fraud or collusion, has violated a term of the contract. The comment considered that the Act thus severely impairs the ability of the insurer to defend itself in the event that the insured refuses to cooperate. The comment urged that the regulation include a statement that the insured would be expected to comply with provisions of the contract relating to cooperation with the insurer. Language to that effect has been included in § 151.7.

Another comment recommended that procedures be included to permit the Department to verify statements of self-certification submitted under § 151.8 by having copies of cancellation notices sent to the Department by insurers and by "spot checking" with designated insurers. The Department considered this recommendation but determined that including such a procedure for having cancellation notices sent to the Department was neither necessary nor appropriate, particularly in view of the fact that cancellation notices are often issued for non-payment of premiums, a matter later rectified by remittance of the premium. In respect of "spot checking", the Department has amended § 151.8 to respond to this concern.

The third comment suggested that the definition of "authorized insurer" in § 151.6 be broadened to include "surplus lines" insurers in order to conform the regulation to existing industry practice and to reflect the international character of the business. The Department was concerned not to exclude from the scope of the definition insurers permitted to write insurance by the applicable laws of the jurisdiction. By the same token, however, the Department did not wish to include those not permitted to write insurance under local law. Accordingly, § 151.6 has been amended to include insurers which are licensed "or otherwise authorized by applicable law" to do business in the jurisdiction concerned.

Further review of the proposed regulation by the Department indicated the need for additional modifications of a clarifying and procedural nature. These include: (a) Adding to § 151.2, for ease of reference, the statutory definitions set forth in Section 2 of the Act; (b) specifying that evidence of insurance required by § 151.9 may be submitted either by the Chief of Mission or by any other duly authorized mission official; and (c) clarifying that evidence of insurance under § 151.8 must be submitted upon official request as well as on a periodic basis.

Accordingly, by virtue of the authority vested in the President by Section 6(b) of the Diplomatic Relations Act (22 U.S.C. 254e(b)) and delegated to the Secretary of State by Executive Order No. 12101, a new Part 151 is hereby added to title 22 of the Code of Federal Regulations as set forth below:

For the Secretary of State.

Dated: May 15, 1979.

Ben H. Read,

Under Secretary for Management.

Subchapter F—Diplomatic Privileges and Immunities

PART 151—COMPULSORY LIABILITY INSURANCE FOR DIPLOMATIC MISSIONS AND PERSONNEL

Sec.

151.1 Purpose.
151.2 Definitions.
151.3 Types of insurance coverage required.
151.4 Minimum limits for motor vehicle insurance.
151.5 Recommended limits for motor vehicle insurance.
151.6 Authorized insurer.
151.7 Policy terms consistent with the Act.
151.8 Evidence of insurance for motor vehicles.
151.9 Evidence of insurance required for diplomatic license plates and waiver of fees.
151.10 Minimum limits of insurance for aircraft and/or vessels.
151.11 Notification of ownership, maintenance, or use of vessel and/or aircraft; evidence of insurance.

Authority: Sec. 4, 63 Stat. 111 (22 U.S.C. 2658); Sec. 6 Pub. L. 95–393 (92 Stat. 809, 22 U.S.C. 254e); E.O. 12101 (43 FR 54195).

§ 151.1 Purpose.

This part establishes regulations required under section 6 of the Diplomatic Relations Act (Pub. L. 95-393; 22 U.S.C. 254e). These regulations require all missions, members of missions and their families, and those officials of the United Nations who are entitled to diplomatic immunity to have and maintain liability insurance against the risks of bodily injury, including death, and property damage, including loss of use, arising from the ownership, maintenance, or use in the United States of any motor vehicle, vessel, or aircraft.

§ 151.2 Definitions.

(a) "Act" means the Diplomatic Relations Act, Pub. L. 95–393 (22 U.S.C. 254a et seq., 28 U.S.C. 1364).

(b) "Persons subject to the Act", as defined in Section 2 of the Act, means: (1) The head of a mission and members of the diplomatic staff, administrative and technical staff, and service staff of a mission, as such terms are defined in Article 1 of the Vienna Convention on Diplomatic Relations of April 18, 1961 (TIAS 7502, 23 U.S.T. 3227); (2) members of the family of a member of the diplomatic staff of a mission who form part of his or her household if they are not nationals of the United States, and members of the family of a member of the administrative and technical staff of a mission who form part of his or her household if they are not nationals or permanent residents of the United States; and (3) senior officials of the United Nations as defined in paragraph (d) of this section.

(c) "Missions", as defined in Section 2 of the Act, means missions within the meaning of the Vienna Convention on Diplomatic Relations and any missions representing foreign governments, individually or collectively, which are extended the same privileges and immunities, pursuant to law, as are enjoyed by missions under the Vienna Convention.

(d) "Senior United Nations official" means a United Nations official entitled to diplomatic immunity as provided in § 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946 (21 UST 1418; 1 UNTS 16).

(e) "Insurance" means insurance as required by the Act and these regulations.

§ 151.3 Types of insurance coverage required.

(a) Every person subject to the Act and every mission shall have and maintain with respect to any motor vehicle, vessel or aircraft owned by, leased to, or furnished for the regular use of every such person or mission liability insurance in accordance with the form, terms, and conditions provided for in these regulations.

(b) The insurance shall provide coverage against the following risks to third parties arising from the ownership, maintenance, or use in the United States of any motor vehicle, vessel, or aircraft:

(1) Bodily injury, including death;

(2) Property damage, including loss of use; and

(3) Any additional coverage required to be included in liability insurance policies by the jurisdiction where the motor vehicle, vessel or aircraft is principally garaged, berthed, or kept, such as uninsured motorist coverage or first party no-fault coverage.

§ 151.4 Minimum limits for motor vehicle insurance.

The insurance shall provide not less than the minimum limits of liability specified in the financial responsibility, compulsory insurance or other law of the jurisdiction where the motor vehicle is principally garaged.

§ 151.5 Recommended limits for motor vehicle insurance.

Every person subject to the Act and every mission should have and maintain insurance adequate to afford reasonable compensation to accident victims. Minimum limits of liability of $100,000 per person and $300,000 per incident for bodily injury, including death, and $50,000 per incident for property damage, including loss of use, are recommended to meet this objective.

§ 151.6 Authorized insurer.

The insurance must be issued by an insurer licensed or otherwise authorized by applicable law to do business in the jurisdiction where the motor vehicle, vessel or aircraft is principally garaged, berthed or kept.

§ 151.7 Policy terms consistent with the Act.

(a) The insurance shall be construed in conformity with the Act. In particular, no effect shall be given to any policy terms which are inconsistent or in conflict with those provisions of the Act stating that any suit against the insurer under the policy shall not be subject to any of the following defenses:

(1) That the insured is immune from suit;

(2) That the insured is an indispensable party; or

(3) In the absence of fraud or collusion, that the insured has violated a term of the contract, unless the contract was canceled before the claim arose.

(b) Notwithstanding the provisions of paragraph (a) of this section, the insured is expected to respond to reasonable requests from the insurer for cooperation.

§ 151.8 Evidence of insurance for motor vehicles.

(a) Every mission must periodically, and otherwise upon official request, furnish evidence satisfactory to the Department of State that the required insurance is in effect for the mission, its members and their families. Every senior United Nations official must also periodically furnish evidence satisfactory to the Department of State that the required insurance is in effect.

(b) The Department of State will accept as satisfactory evidence that the required insurance is in effect:

(1) A written statement of self-certification signed by the Chief of Mission, indicating that the mission, its members and their families have and will maintain insurance throughout the period of registration of all vehicles owned or leased or otherwise regularly used, and showing the name of the insurance company or companies and identifying each policy by number and name of insured; and

(2) A written statement of self-certification signed by each senior United Nations official, indicating that he or she has and will maintain insurance throughout the period of registration on all motor vehicles owned or leased or otherwise regularly used, and showing the name of the insurance company or companies and identifying each by number and name of insured.

(c) A certification under paragraph (b) of this section by a Chief of a Mission to the United Nations or by a senior United Nations official shall be delivered to the Counselor for host country affairs of the United States Mission to the United Nations. All other certifications shall be delivered to the Chief of Protocol, Department of State.

§ 151.9 Evidence of insurance required for diplomatic license plates and waiver of fees.

The Department of State will not endorse on behalf of any person subject to the Act or any mission any application for diplomatic motor vehicle license plates or any application for waiver of motor vehicle registration fees without prior receipt of satisfactory evidence from the Chief of Mission or other duly authorized official that the required insurance is in effect.

§ 151.10 Minimum limits of insurance for aircraft and/or vessels.

Insurance in respect of vessels and/or aircraft shall provide limits of liability adequate in light of reasonably foreseeable risks from the ownership, maintenance, or other regular use of vessels and/or aircraft.

§ 151.11 Notification of ownership, maintenance or use of vessel and/or aircraft; evidence of insurance.

(a) Each person subject to the Act and each mission must notify the Department of State in writing of the ownership, maintenance or other regular use of a vessel or aircraft in the United States by such mission or person.

(b) Notices under paragraph (a) of this section shall identify the vessel and/or aircraft with specificity, including model and manufacturer's name, and serial and registration numbers. Each notification shall be accompanied by a copy of the insurance policy or policies issued in respect of the vessel and/or aircraft. Such policy or policies need not be issued by the insurer providing liability insurance for motor vehicles.

(c) With regard to senior United Nations officials, missions to the United Nations and members of such missions as have diplomatic status and their families, notices and evidence of insurance under this section shall be delivered to the counselor for Host Country Affairs of the United States Mission to the United Nations. All other notices under this section shall be delivered to the Chief of Protocol, Department of State.

[FR Doc. 79-[illegible] Filed [illegible]; 8:45 am]

BILLING CODE [illegible]

SUGGESTED FORMAT

Date

TO: The Chief of Protocol
Department of State

This is to certify that, as indicated below, all motor vehicles owned, leased or otherwise regularly operated by this mission, the members of its diplomatic, administrative and technical, and service staffs and members of their families are now and will, throughout the registration period, continue to be covered by liability insurance which satisfies the requirements of the Diplomatic Relations Act of 1978 and the implementing regulations issued thereunder.

Schedule

License Plate No.	Vehicle Description	Insurance Company	Policy Number	Name of Insured

(Signature)
Chief of Mission

Table of Minimum Liability Insurance Requirements Imposed by Automobile Financial Responsibility Laws in Washington, D.C., and New York City Metropolitan Areas

	Minimum Insurance Requirements*
Washington Area	
District of Columbia	10/20/5
Maryland	20/40/5
Virginia	25/50/10
New York City Area	
Connecticut	20/40/5
New Jersey	15/30/5
New York	10/20/5

*The minimum required coverages for bodily injury and property damage liability are normally expressed as related figures, as in the term "10/20/5." The first two figures refer to bodily injury, in thousands of dollars, and the last to property damage.

Broken down further, the first figure, 10, represents $10,000, or the maximum amount the insurance company will pay for the injury or death of one person. The second figure, 20, or $20,000, is the maximum amount the company will pay in settling bodily injury or death claims arising out of a single accident - regardless of the number of persons involved in the accident. The last figure, 5, stands for $5,000, which is the maximum the insurance company will pay in settling property damage claims.

Privileges and Immunities

Q. What, if any, has been the general reaction of the diplomatic community brought on by adherence to the Vienna Convention's more circumscribed grant of diplomatic immunity?

A. The general reaction of the diplomatic community to U.S. ratification of the Vienna Convention on Diplomatic Relations was positive. It was noncontroversial, as over one hundred countries already had become parties to it before it entered into force for the United States in 1972.

Insurance

Q. -- Has there been any indication that members of the diplomatic community are evading or circumventing the regulations concerning compulsory liability insurance coverage?

A. The Department is not aware and has no reason to believe that members of the diplomatic community have evaded or circumvented compulsory liability insurance regulations. When registering their vehicles, however, there are instances where insurance has been allowed to lapse or has been cancelled immediately after registration has been accomplished.

Q. -- Have there been any attempts by diplomatic persons to register in states where proof of insurance is not required?

A. The Department does not have any reason to believe that diplomats may have registered vehicles in states that don't require any automobile insurance.

Q. -- Have there been any instances of diplomats securing insurance to obtain diplomatic plates and then allowing their policies to lapse?

A. There have been a few instances in which foreign mission members have obtained insurance coverage at the required coverage level to register a vehicle and then cancelled or reduced the coverage after receiving the federal plates. This is normally brought to the attention of the Department by the insurance carriers or brokers, and would be exposed in the Department's annual verification process.

Q. -- How has the Department handled such situations?

A. The Department immediately contacts the mission and informs the appropriate mission official that proof of insurance must be submitted to the Department or the license plates will be subject to seizure. A diplomatic note is delivered to the embassy which formally advises the embassy that if proof of insurance is not received, the Department will initiate procedures to recover the license plates. The note also requests the embassy's cooperation in ensuring that the vehicle in question is not driven. If the embassy fails to supply proof of insurance within the specified period of time (usually 24 hours), the Department will recover the plates. The Department has recovered sets of plates for vehicles which were determined to be uninsured.

Q. -- Departmental policies recommend certain minimum coverage, but generally follow local requirements regarding minimum levels of compulsory liability coverage. How have the Department's recommendations been received by the diplomatic community?

A. The Department's insurance coverage requirements have been set in accordance with Public Law 98-166 at levels that have been deemed adequate to compensate victims of accidents involving members of the diplomatic community. The insurance coverage requirements for bodily injury and property damage do not reflect local requirements and are actually much greater than those required by local jurisdictions for reasons previously stated. The diplomatic community has accepted the Department's insurance requirements and has in some cases even exceeded the required levels.

Q. -- Does the Department have any follow-up procedures to ascertain whether its recommendations have been complied with?

A. Yes. The Department requires the diplomatic community to provide proof of insurance coverage at levels required by the Department at the time of registration. In addition, subsequent to the registration of the vehicle, the Department sends a letter to the insurance carrier to confirm that the coverage supplied by the diplomat is valid and in force. The purpose of this procedure is to prevent foreign mission members from cancelling their insurance after receiving federal license plates. In addition, the letter also requests that the Department be added to the insurance policy as an interested party. As a result of this procedure, the Department receives notification from the carrier whenever any action is taken on the policy. Actions of which the Department is notified range from cancellation either by the insurance carrier or diplomat to simple renewal of the policy. The Department has established a good working relationship with the carriers to the mutual benefit of both.

Q. -- Does the Department review and adjust the minimum liability levels to reflect ever-increasing health care costs?

A. The current insurance liability levels were established in 1985 and have remained constant since that time. The coverages are dramatically higher than those of any local jurisdiction and the Department considers the levels to be adequate. The Department, however, periodically reviews the insurance coverage requirements and will revise the levels as necessary.

Q. -- What procedures exist to discover if an immune diplomat carries no insurance or whose policy is cancelled prior to an accident?

A. Under established procedures, the Department works closely with the insurance carriers, and receives notification whenever a policy is cancelled. The Department contacts the appropriate embassy official and informs the embassy of the seriousness of the case. A diplomatic note with the facts surrounding the case is sent to the embassy. The note requires that the vehicle not be driven and that proof of insurance be submitted to the Department immediately. If the embassy fails to supply proof, the Department retrieves the plates. The plates are held until the diplomat obtains insurance coverage on the vehicle.

In addition, the Department performs random spot checks on embassies to insure that insurance coverage is being maintained on vehicles registered with the State Department. These spot checks involve verifying insurance coverage with insurance carriers and brokers, and requesting proof of valid insurance coverage on federally-registered vehicles from the embassy. If a vehicle is determined to be lacking in insurance coverage, the Deparment initiates procedures to ensure that the vehicle is insured or, if it is not insured, that the Department receives the plates.

The Foreign Sovereign Immunities Act

A provision of the Foreign Sovereign Immunities Act allows an injured party to sue a foreign government directly or on a respondeat superior theory for tortious acts of its "employee or official."

Q. -- Have victims of diplomatic crimes availed themselves of that right to file suit against foreign states?

Q. -- If Americans have received judgments against foreign diplomats, have they actually been able to collect damages?

Q. -- What changes in the Foreign Sovereign Immunities Act might be advisable to ensure that victims can actually collect damages?

A. The following discussion addresses the concerns of the Committee regarding the ability of United States citizens to seek redress against a foreign State for the tortious acts of its employees or officials in United States courts pursuant to the Foreign Sovereign Immunities Act (FSIA).

Section 1605(a)(5) of the FSIA allows suits against foreign States in certain cases involving personal injury occurring in the United States and caused by the tortious act or omission of a foreign State. The fact that courts in the United States may exercise jurisdiction over foreign States in personal injury cases does not mean, however, that every time a foreign State's employee or official commits a tortious act, an injured party may sue the foreign government directly. Section 1605(a)(5) specifically limits jurisdiction of courts in the U.S. over personal injury suits against a foreign State to cases in which an official or employee of that foreign State is "acting within the scope of his office or employment." This issue would have to be adjudicated in each case.

The Department of State would not necessarily be aware of all cases in which victims of alleged wrongful conduct committed by foreign government officials have availed themselves of the right to file suit against foreign States pursuant to the Foreign Sovereign Immunities Act. There are, however, a number of such cases which have come to the Department's attention. See, e.g., Olson v. Republic of Singapore, 636 F.Supp. 885 (D. D.C. 1987) (plaintiff sued Republic of Singapore after falling in embassy). Recently, the Ambassador of Papua New Guinea was involved in an accident in which one person was seriously injured. The victim brought suit against the company that insured the embassy vehicle that he was driving and later added the Government of Papua New Guinea and the former Ambassador as defendants.

The Department of State is not aware of any significant body of cases in which judgments entered against foreign States on behalf of victims of tortious conduct have gone uncollected or the cases have not been resolved. We hope the reason for this is that foreign governments seek to resolve such claims, thereby avoiding litigation under the FSIA.

Because the Department is unaware of any significant body of cases in which victims of tortious conduct have been unable to recover damages against foreign States, the Department believes that changes in the FSIA to ensure that victims can actually collect damages are unnecessary. Legislation (H.R. 1888) has been introduced that would seek to facilitate recovery against foreign States by loosening the requirement in the FSIA that there be a "nexus" between the cause of action and the foreign State commercial property on which judgment is sought to be executed. The Administration has not supported this legislation because it believes there are strong reasons to maintain the original decision of the Executive and Congress in the FSIA to limit execution against the property of foreign governments to commercial property related to the claim.

The restrictive theory of immunity was designed to allow private parties to bring actions in domestic courts against foreign sovereigns when they entered the marketplace. It is uncertain to what extent States are willing to subject themselves to the jurisdiction of foreign courts in cases that do not involve the commercial activity of a foreign State, particularly in the area of non-commercial torts, and to allow execution against all State property in this potentially sensitive area we believe would put the United States out ahead of relatively undeveloped international practice.

The inventiveness of American lawyers and courts in developing novel theories of liability, the size of judgments as well as the burdens of litigation generally, create the uncertainty and risk of perceived or real harassment in non-commercial tort actions not normally associated with commercial actions. Moreover, jurisdiction over non-commercial torts goes beyond routine negligence cases, such as automobile accident cases, and potentially extends to the deliberate actions of foreign governments. States, including the U.S., are generally reluctant to enter into the domestic courts of another State to defend their deliberate actions, especially if such actions involve charges of serious violations of domestic or international law. Foreign States would be encouraged to apply our liability standards against us and our nationals, perhaps without the same care we exercise in these matters. Consequently, any restriction in immunity in this area could adversely affect the extensive U.S. Government presence abroad.

Finally, and perhaps most importantly, torts by foreign governments, particularly deliberate actions, are most appropriately resolved on a government-to-government basis by diplomatic means. Private attempts to attach and execute against foreign State property may undermine sensitive diplomatic initiatives undertaken by the United States including efforts to bring the perpetrators to justice and to obtain compensation for the victims. When actions are taken against U.S. citizens by foreign governments, the U.S. Government needs the flexibility to determine and apply U.S. responsive actions whether diplomatic, economic, or even military.

No-Fault National Fund

Q. It has been suggested that a no-fault national fund to compensate victims of diplomatic crimes be created to handle those situations where there is no procedure for handling tort actions against those possessing diplomatic immunity. What is your view of such a scheme?

A. When the 95th Congress was considering the reform of domestic law on diplomatic immunity, the Department's views were sought on a bill which would have established a bureau within the Department of State, to be headed by an Assistant Secretary for Claims Against Foreign Ministers and Diplomats, for the purpose of adjudicating and awarding just compensation for claims arising out of the tortious acts of persons with immunity.

At that time the Department stated that for various reasons it would be inclined to oppose enactment of legislation which would impose upon the Federal Government sole liability for relief in these cases. Such legislation, we thought, would place the Government in the position of having to act as the arbiter of actions which are essentially private in nature, and to do so without benefit of the evidence that is normally available to a court of law. It was also the Department's view that it would have adverse budgetary consequences for the Federal Government through its assumption of financial responsibility without a sound basis for accurately determining actual damages. It further appeared to the Department to have the potential of lessening the sense of responsibility for assuring just settlement of such cases which rightly should rest with the sending State.

In late 1980 there occurred a departure from this general position when the Office of Management and Budget requested the Department's recommendation as to whether the President should approve or veto a bill for the relief of Dr. Halla Brown, who had been left a bedridden quadriplegic as the result of an automobile accident caused by a diplomat in 1974. In its response the Department first restated its position over the years that the Federal Government is not liable for the tortious acts of foreign governments or of their personnel in this country, and that it had consistently opposed approaches which would make the Government an insurer vis-a-vis claims brought by citizens frustrated by the shield of diplomatic immunity. The Department then went on to state:

> "Nevertheless, Dr. Brown's tragic accident is the most dramatic instance known to us of personal injury suffered by one of our citizens at the hands

> of a foreign diplomat. The fact that the diplomat was uninsured coupled with his entitlement to immunity resulted in a complete denial of relief from him. This led to efforts by the Department of State to induce his government to make an *ex gratia* payment, based on compassion and not on assumption of legal liability. These efforts were ultimately successful in bringing about a payment of $100,000, which we believe constitutes the most substantial compensation ever extended by a foreign government in a case of this kind. However, the sum appears to be insufficient to defray the heavy expenses of Dr. Brown's long-term care.
>
> "Dr. Brown's plight in a unique way served to underscore the lack of recourse available to innocent victims who may sustain personal hardship in certain cases involving diplomatic immunity. The reforms contained in the Diplomatic Relations Act of 1978 which require all foreign mission members to carry automobile liability insurance and which incorporate the 'direct action' provision allowing an injured party to sue the insurance carrier directly in those instances where diplomatic immunity may continue to be involved, are in part responses to deficiencies in the justice system that had been dramatized by Dr. Brown's misfortune. Her inability to benefit personally from the legislation for which her tragic case was perhaps the prime motivation must only compound the poignancy of Dr. Brown's predicament. Taking all the exceptional circumstances into consideration the Department of State recommends approval by the President."

President Carter did sign the bill, which directed that Dr. Halla Brown be paid the sum of $500,000, less the amount, if any, paid her by the Republic of Panama, whose diplomat had been responsible for the automobile accident that caused her lifelong invalidism. Since the government of Panama in October 1977 had made an *ex gratia* payment of

$100,000 to Dr. Brown, the Treasury accordingly issued her a check for $400,000. The private law, incidentally, also provided that no amount in excess of ten percent of the sum paid to her under its terms should be paid to any agent or attorney for services rendered in connection with her claim and made any violation of this provision a misdemeanor.

Fortunately, it may be assumed that there will rarely be a victim in the future who will suffer injuries as severe as Dr.Brown's at the hands of a person with diplomatic immunity. Moreover, should the injuries be sustained in an automobile accident, it may also be assumed that the automobile driven by the person with immunity will be one covered by liability insurance in accordance with the Diplomatic Relations Act of 1978, and that such insurance could be expected to provide reasonable compensation in most tort cases of this nature. Nevertheless, in the absence of compensation by the offender or an ex gratia payment from the foreign government, victims of crimes or torts not automobile-related may be left without the possibility of relief other than via a private bill.

In principle, we believe that victims of crimes by persons possessing immunity should receive compensation if efforts to obtain payment from the sending State are fruitless. We also think that a careful study of the matter and of possible changes should be conducted. The practice of other countries might also be consulted. We understand, for example, that victims of "diplomatic crimes" have access to a Criminal Injuries Compensation Board in Great Britain, and that in Canada the Federal Department of Justice has entered into cost-sharing criminal injuries compensation programs with the provinces and the territories to which victims of persons shielded by immunity have access.

The Department would be pleased to participate in any study of this matter.

Department Policy on Investigations of Criminal Allegations

In 1986, it was reported that the State Department made a policy decision to notify local law enforcement officials of government interest in a thorough investigation in cases of "possible serious violations" of U.S. law by foreign diplomats.

Q. -- In how many instances has such notification been made to local law enforcement officials?

A. In March 1987, the Department of State published a document, Guidance for Law Enforcement Officers, setting forth the Department's policy regarding the need for thorough investigations in such cases. To date, over 25,000 copies of this publication have been distributed to law enforcement authorities throughout the United States. Copies of this publication were delivered to the Committee on August 5, 1987, at the time of the Chief of Protocol's testimony on S.1437.

Q. -- In how many cases has such an investigation been completed and an indictment obtained or an arrest warrant issued?

A. While the Department's records do not indicate any cases where an indictment has been obtained or an arrest warrant issued, we are aware of one case which has been under investigation and review by the U.S. Attorney for the District of Columbia. That case concerns the automobile accident in February 1987, involving the then Ambassador of Papua New Guinea.

Q. -- What is the potential impact of an outstanding arrest warrant when entered into U.S. immigration records? Could the existence of such a warrant effectively bar the offender from ever reentering the United States?

A. The mere existence of an outstanding United States arrest warrant is not *per se* a ground of exclusion under section 212(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(a). The impact of a U.S. arrest warrant on exclusion from the U.S. depends on the nature and severity of the offense and the circumstances of the offense charged. In some circumstances, these factors may render an alien ineligible for a visa or subject the alien to exclusion at the port of entry. Alternatively, where appropriate, we may wish to admit an alien subject to an outstanding arrest warrant for the purposes of arrest and trial.

Insurance

The Diplomatic Relations Act requires all diplomatic missions, members of missions, their families, and certain members of international organizations to obtain liability insurance covering the operation of motor vehicles, vessels, or aircraft in the United States. The Secretary of State has authority to formulate regulations implementing these features of the law.

Q. -- When was the current liability minimum of $300,000 in combined personal and property coverage per incident promulgated? Is this amount adequate to reflect current medical and legal costs accident victims often incur?

A. The Department in January 1985 imposed the requirement for $300,000 per accident. We did so after convening a board with outside insurance expert consultants. The $300,000 level is substantially greater than the requirement of any of the states. The Department, in arriving at the $300,000 level, recognized that periodic review of the level was essential and it is our present plan to review the level every five years. Because the amount was arrived at late in 1984, the next review will be conducted in 1989 and if new minimums are recommended by the board of examiners they will be imposed in January 1990.

Q. -- What steps were taken by the Department to apprise diplomatic missions in Washington and New York of their liability insurance needs?

A. The Department first informed the diplomatic missions on October 31, 1978, of the requirement that vehicles be covered by liability insurance. Then, on May 22, 1979, the Department informed the missions that the required motor vehicle insurance would not be less than the minimum limits of liability specified by applicable local law, although higher limits were strongly recommended. Since then, the Department has informed the diplomatic community of a new liability insurance program, as promulgated in the circular note of January 9, 1984. Most recently the circular notes of May 8, 1985, and March 7, 1987, were issued as reminders. These notes in very clear terms state that foreign mission members must carry the federal liability insurance coverages of $100,000 per person, $300,000 per accident, and $100,000 property damage, or $300,000 combined single limit on all vehicles registered with the State Department. In addition, the United States Mission to the United Nations (USUN) has disseminated the requirements for insurance coverage for vehicles registered to United Nations personnel in two circular notes.

Q. -- How has the diplomatic community responded to these legal requirements?

A. At first, the diplomatic community felt that the higher insurance requirements imposed by the Department were unduly harsh considering the low coverages required by most states. The Department, however, explained that due to the higher liability settlements in this country and in view of a foreign mission member's immunity from civil judgment the higher limits were necessary to give a potential accident victim some recourse for recovery of damages. The diplomatic community, on the whole, understands the purpose behind the coverages and has accepted the requirement.

Q. -- Under Departmental regulations, missions must certify to State that the required insurance is in effect for the mission, its members, and their families. Without such certification, State will not endorse applications for diplomatic license plates or approve the waiver of motor vehicle registration fees. Has this procedure proved workable and effective?

A. Since August 1984, foreign mission members have been required to provide proof of insurance coverage in order to obtain federal license plates. The procedure has proved very workable and effective. All vehicles are required to have federally issued plates. Fees for vehicle registration are based on reciprocity.

Additional Questions for the Administration re Diplomatic Immunity

1) Q: In your testimony, you state that the language of S. 1437 would not cover family members of diplomatic agents or family members of the administrative and technical staff. Please explain the basis for this testimony.

A: The legislation reads: "Be it enacted . . . That . . . members of a foreign diplomatic mission (other than diplomatic agents) . . . shall not be entitled to immunity . . . ." (emphasis supplied). The bill states that this term is used within the meaning of the Vienna Convention on Diplomatic Relations (VCDR). The VCDR defines "members of the mission" as "the head of the mission and the members of the staff of the mission," Article 1(b), VCDR. "Members of the staff of the mission" is defined as "members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission," Article 1(c), VCDR.

The VCDR, however, does not define "family members" as "members" of diplomatic missions, and S. 1437 states that it applies to "members" of diplomatic missions except diplomatic agents as defined by the Convention.

In addition, Article 37 of the Convention incorporates by reference the specific privileges and immunities that attach to (a) "the members of the family of a diplomatic agent forming part of his household" if they are not nationals of the receiving State and (b) to members of the families of members of the administrative and technical staff of the mission "if they are not nationals of or permanently resident in the receiving State." For these reasons the bill does not extend its coverage to the family members of diplomats or of members of the administrative and technical staff.

2. Q: Again, in your testimony, in a discussion of the British Foreign Office's review of the Vienna Convention in the aftermath of the Libyan Embassy incident, you indicate that the British Government implemented a firmer policy in its application of the convention. Please provide the details of that firmer policy with respect to application of the Convention.

A: See attachment: Diplomatic Privileges and Immunities - The British Government's Report in April 1985 on Review of the Vienna Convention on Diplmatic Relations and Reply to "The Abuse of Diplomatic Immunities and Privileges," a report by the Foreign Affairs Committee of the House of Commons published on 23 January 1985.

ATTACHMENT

British Government Report, "Diplomatic
Immunities and Privileges."

Miscellaneous No. 5 (1985)

Diplomatic Immunities and Privileges

Government Report on Review of the Vienna Convention on Diplomatic Relations and Reply to "The Abuse of Diplomatic Immunities and Privileges"

The First Report from the Foreign Affairs Committee
in the Session 1984–85

Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
April 1985

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DIPLOMATIC IMMUNITIES AND PRIVILEGES

Government Report on Review of the Vienna Convention on Diplomatic Relations and Reply to "The Abuse of Diplomatic Immunities and Privileges"

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MAIN POINTS FROM THE WHITE PAPER

- The Government are determined to restrict abuse of diplomatic immunity and to deal with it severely when it occurs. They have conducted a thorough review of all the legal and practical possibilities for action.

- A firmer policy towards application of the Vienna Convention has been implemented.

- The Government's requirements and procedures have been tightened. Stricter standards are being applied, in particular on:

  —size of diplomatic Missions;

  —notification of new staff;

  —use of diplomatic premises;

  —handling of diplomatic bags;

  —breaches of criminal law;

  —illegal parking.

- All the major recommendations of the Foreign Affairs Committee have been accepted.

- New elements of international co-operation, particularly in the area of terrorism, are in operation.

INTRODUCTION

1. In his statement to the House of Commons on 1 May 1984 the Secretary of State for Foreign and Commonwealth Affairs said that he had "instituted a full Review of the Vienna Convention, its operation and enforceability" and that he would report the outcome of this Review to the House. He also indicated that he would welcome the views of the Foreign Affairs Committee. The Committee's Report on "The Abuse of Diplomatic Immunities and Privileges" was published on 23 January 1985. It includes records of the detailed evidence submitted to the Committee by the Foreign and Commonwealth Office.

2. The Government appreciate the valuable work of the Committee in illuminating areas of particular concern and welcome the Report. The specific conclusions and recommendations have been studied with care. The Government note that there is much common ground between the views of the Committee and their own conclusions.

3. This paper constitutes both the Government's Report on the Review of the Vienna Convention on Diplomatic Relations and also their considered reply to the Report of the Foreign Affairs Committee.

General Scope of the Review

4. The commitment to undertake the Review was given in the aftermath of the events outside the Libyan People's Bureau in St. James's Square on 17 April 1984. It received added impetus from the events relating to the attempted abduction of Mr. Umaru Dikko on 5 July 1984. Wider questions concerning immunities and privileges arose out of evidence considered by the Foreign Affairs Committee. The abuse of diplomatic immunity has caused serious and legitimate public concern, and particularly when it leads to acts of terrorism.

5. Given this context the Government set itself the following specific objectives:

(*a*) to examine the Articles of the Vienna Convention, and in particular those relating to immunity and inviolability; and to consider whether it would be (i) desirable and, if so, (ii) practicable *either* to propose amendments of the Convention *or* to apply more stringently any of its existing provisions in ways which would help to prevent abuse and at the same time be consistent with Her Majesty's Government's overall interests;

(*b*) to seek international support for any measures that may be desirable and practicable to improve the operation and enforceability of the Vienna Convention.

6. The Government accept the Committee's observation that the events involving the Libyan People's Bureau and the attempted abduction of Mr. Umaru Dikko have not been the only source of concern about diplomatic immunities and privileges in the UK, merely the most serious (para 5 of their Report). Thus, while taking full account of the lessons learnt from these events, we have decided to take a wider and forward-looking approach.

7. The Government have studied the provisions of the Vienna Convention in relation to two broad categories of abuse:

(*a*) deliberate abuse of the diplomatic bag, diplomatic premises or diplomatic status for activities of a terrorist or political nature;

(*b*) incidental abuse covering matters of a more personal nature, in particular breaches of the criminal law.

8. The main areas of difficulty, some of which have only arisen in acute form since the Vienna Convention was drawn up in 1961, include:

(*a*) the opportunity for members of diplomatic missions to take advantage of their immunity to carry out, or escape prosecution for, serious criminal activities extending even to terrorism;

(*b*) the freedom of sending states to appoint members of diplomatic missions and thus to provide diplomatic cover for persons not carrying out legitimate diplomatic functions;

(*c*) reliance on diplomatic immunity for relatively petty offences often unrelated to any perceived function of a diplomatic mission;

(*d*) more cars and more traffic congestion which has led to a proliferation of driving and parking offences for which immunity is claimed;

(*e*) the constraints on receiving states in applying the main sanctions that exist in the Vienna Convention in dealing with or preventing abuse.

Amendment of the Vienna Convention

9. The Government have studied the views of the Committee on the desirability and practicability of seeking to amend the Vienna Convention in specific cases of abuse (paras 53–57). This would alter the balance between immunities and obligations. Existing obligations include the duty of all persons enjoying privileges and immunities to " respect the laws and regulations " of the receiving state (Article 41.1). Any change that strengthened this provision and enabled receiving states to enforce their own laws in respect of foreign diplomats could be valuable in dealing both with state-sponsored terrorism and more petty abuses. It could also however mean a corresponding reduction in the protection given to the personnel and facilities of sending states. This could bear hardly on states that generally abide by the existing rules and lead in some cases to unjustified harassment. It could also restrict the ability of Governments, acting on behalf of their country and its citizens, to carry out legitimate business overseas.

10. Moreover the Vienna Convention is a codification of international law and practice going back many hundred years which was re-examined carefully by the international community before it was agreed in 1961. As such it is almost universally respected. 145 states have become parties. The 1964 Diplomatic Privileges Act gave effect to it in the UK. Those very few states which are not parties give general effect to its terms. In practice it has become the modern customary law so that termination of our acceptance of the Convention (even if legally possible) would leave us in

substantially the same position. It has provided a framework which is explicit and clear in many respects but nevertheless leaves room for common sense in its detailed interpretation and application.

11. We have made extensive international soundings on the feasibility of amending the Vienna Convention through renegotiation. There is a widespread consensus that attempts to do so would not succeed. They could in fact create more problems than they would solve by opening up issues on which disagreements could surface and thrive. Given the ambiguities and grey areas, the process would be complex and time consuming and would lead to a very confused position until the great majority of states accepted any amendments by ratification. We have therefore agreed with the Committee's conclusion that:

> "Given the difficulties in the way of achieving any restrictive amendment to the Convention, and the doubtful net benefit to the UK of so doing, it would be wrong to regard amendment of the Vienna Convention as the solution to the problem of abuse of diplomatic immunities. Accordingly, the Government are right not to concentrate on amendment of the Convention as a major element in new policies to restrict abuse of immunities".

UK Objectives

12. In view of the difficulties and the risks of seeking to open up the Vienna Convention for amendment the Government have concentrated on examining areas of action within the existing framework:

- (*a*) creation of a climate of opinion that will help prevent abuses of diplomatic immunity and lead to firm action being taken against offending states or individuals, e.g. through agreed declarations in international bodies and through the development of common practices;
- (*b*) work on new international rules to clarify and, where appropriate, to develop certain provisions in the Vienna Convention;
- (*c*) strict application of the existing provisions of the Vienna Convention;
- (*d*) introducing restrictive but legally justifiable interpretations of specific provisions of the Vienna Convention where required.

These areas of action are not mutually exclusive; they form part of a continuous process. Our main objective in pursuing specific policies has been, and will remain, to prevent abuse while protecting the overall interests of the UK as both a receiving and sending state.

Methods

13. Under these broad headings the following action has been taken or is in hand:

(*a*) *International climate of opinion and practice*

(i) Britain has played a leading rôle in international bodies, including particularly the Ten, to increase co-operation among like-minded

Governments to prevent abuses of immunity for terrorist purposes. Apart from the Ten, we have taken action in the London Economic Summit Seven and the Council of Europe. We have also raised the question in the United Nations General Assembly and (at official level) the Commonwealth. These initiatives led to the Summit Seven Declaration on International Terrorism of 4 June 1984 and the Agreement of 11 September 1984 by Foreign Ministers of the Ten (endorsed by the European Council on 4 December 1984) on co-ordinated measures designed to combat terrorism and the abuse of diplomatic immunity.

(ii) New elements of practical and useful co-operation are now in operation. These include exchanges of relevant information on diplomats and on other security measures. They also include a commitment to common and rigorous practices on matters such as the notification of staff, the size of diplomatic missions and the use of diplomatic premises. Work by the Ten on this subject continues. Bilateral exchanges have also taken place with other Governments with a view to creating a broader spectrum of support for the kind of measures agreed by the Ten. We are playing a full part in the work being carried out in the Council of Europe to follow up the resolution on terrorism and international organised crime which was adopted in May 1984 by the Council of Europe Ministers of Justice. The Government appreciate the Committee's welcome and support for the efforts made to seek close co-operation amongst Western Governments and for the progress so far achieved (para 119). We will continue to press for further improvement in international co-operation in the whole field of terrorism and in particular to deal with the abuse of diplomatic immunity for terrorist ends;

(*b*) *New international rules*

The International Law Commission are currently considering new Articles on the status of the courier and the diplomatic bag. This could lead to international agreement on the development or modification of Article 27 of the Vienna Convention. The Government have ensured that our concerns over abuse of the diplomatic bag are fully taken into account in these deliberations. Where opportunities exist in other areas we will also work for appropriate modifications to restrict abuse of immunities.

(*c*) and (*d*) *Administration of Vienna Convention*

Although some progress can be, and has been, achieved through the processes described at (*a*) and (*b*) above, the main action must lie in administrative measures by the UK as receiving state to control the operation and enforcement of the provisions of the Vienna Convention. We have considered whether it would be right to adopt a different general approach, which could in turn require a larger administrative structure (including additional staff, finance and the support of computer systems) or whether a tighter code of practice can be implemented without additional administrative costs. Our general conclusions on this are set out below.

General interpretation and application of the Vienna Convention

14. The Committee have stated that a firmer policy towards application of the Vienna Convention is the only effective weapon that the Government possess and should be strongly pursued (para 123). After a full review of the subject including the legal and practical possibilities, the Government have reached the same conclusion.

15. In pursuing a firmer policy, there are a number of important principles that will need to be respected:

(*a*) adherence to agreed international rules to which we subscribe. Therefore any administrative action to apply the Vienna Convention restrictively must have a sound legal basis;

(*b*) preservation of a balance between a general level of immunities for our functions overseas and an adequate means to enforce obligations on others in the UK. Therefore any administrative action we apply to others we must be prepared in principle to accept for ourselves. Our ability to protect British interests overseas could be affected by any limitations we impose as a receiving state. As the Committee recognise (para 56) the concept of reciprocity is crucial;

(*c*) application of the Vienna Convention consistently and on an equal basis. Section 3 of the Diplomatic Privileges Act 1964 gives power to withdraw privileges and immunities where it appears that those accorded to a British mission in a particular country or to persons connected with it are less than those conferred by the Act on the mission of that country or persons connected with it. Use of this power can be effective in some cases but it is best used selectively.

16. Political constraints will often apply in individual cases. The options for firmer action need to be kept under continuous review as circumstances change, and new areas of political abuse come to light. We have also carefully considered the possibility of introducing computer systems that could assist in the task of controlling the activities of the Diplomatic Corps in the UK. At present these are too costly in terms of money and manpower in relation to their likely effectiveness. But here too we shall keep the position under review.

17. On the basis of the above considerations a stricter application of the Vienna Convention has already been implemented. Details of the action taken are set out in the sections below. They cover notification of staff (paras 18–27), size of diplomatic missions (paras 28–32), diplomatic premises (paras 33–40), diplomatic bags (paras 41–56) and immunity of diplomats from jurisdiction (paras 57–73). A section on parking offences is also included (paras 74–80).

Notification of Staff

18. The total number of persons in the UK entitled to diplomatic immunities and privileges over the past ten years has remained fairly constant. We are not therefore facing a new problem involving an increase in numbers.

Details are as follows:

(*a*) *Numbers of staff entitled to full immunity from criminal jurisdiction*

	1985 (Feb)	*1979*	*1974*
1. Diplomatic staff of diplomatic missions...	2,295	2,247	1,932
2. Diplomatic staff of Commonwealth Secretariat	43	43	27
3. High Officers of international organisations	10	8	9
4. Administrative and technical staff of diplomatic missions	2,162	2,796	2,702
5. Consular officers and employees of Polish Consulate-General in London and Glasgow	14	13	8
	4,524	5,107	4,678

(*b*) these figures do not include "members of the family forming part of the household" who, under Article 37 of the Convention, enjoy the same immunities and privileges (unless they are nationals of, or permanently resident in, the receiving State). The overall total of persons qualifying for full immunity, including dependants, is estimated at around 15,000;

(*c*) in February 1985 a further 2,712 enjoyed more limited immunities and privileges in respect of acts performed in the exercise of their duties or official functions, including 342 service staff of diplomatic missions, 1,563 officials of (and certain other persons connected with) international organisations including the Commonwealth Secretariat and 807 Consular officers and employees.

19. Problems of abuse or attempted abuse arise mainly out of the interpretation of Article 7 of the Convention which states that "the sending state may freely appoint the members of the staff of the Mission", though this is partly circumscribed by the *persona non grata* provision in Article 9 and the provision in Article 11 that enables the receiving state to limit the size of a Mission. Particular problems include:

(*a*) notification as diplomatic staff of persons who should more properly be regarded as administrative and technical staff; and apparent disproportion in certain cases between diplomatic staff and administrative and technical staff;

(*b*) notification of staff (such as students and teachers) whose functions do not appear properly or fully to fall within those of a diplomatic Mission;

(*c*) imprecise definition of "members of the family forming part of the household";

(*d*) notification as administrative and technical staff, entitled to immunities and privileges, of persons originally appointed as locally engaged staff (whom we would treat as permanently resident and therefore not so entitled);

(*e*) failure by missions to reclassify members of diplomatic or administrative and technical staff (or their dependants) who have become UK nationals or permanently resident, e.g. following marriage to British citizens.

We have also been concerned about the employment as locally engaged mission staff of persons who would not otherwise be permitted to stay and work in the UK. These include members of the service staff, e.g. chauffeurs and cleaners, who are thereby able to evade the enforcement of immigration rules.

20. Article 10.1 requires notification to the receiving state of new appointments and of the termination of the functions or status of persons entitled to immunities and privileges. *Agrément* is required in advance for Heads of Mission (except those from Commonwealth countries of which the Queen is also the Head of State). Other new appointments are notified to the FCO on arrival on a prescribed form. Each form has to be signed by the Head of Mission or, in certain cases, his designated nominee. These notification forms are scrutinised carefully by the FCO. Further information is sought or queries are raised with the mission concerned in about one in five cases.

21. Since the Vienna Convention contains no objective definition of staff categories, checks carried out after notification usually relate to questions of nationality, designation, residence or family status. Doubts about official status of duties are rarely apparent from the notification form and it is virtually impossible in most cases for the FCO to tell whether a person should more properly be described as a diplomat or as a member of the administrative and technical staff or indeed as a member of the mission at all. In certain cases we refuse to accept notifications and they are withdrawn by the mission concerned. The *persona non grata* sanction is exercised where there is good reason to do so. Where appropriate we make use of our exchanges of information with European Community and other countries which have recently been increased.

22. There is a visa requirement for certain countries which enables prior checking to be carried out on those expecting to take up appointments in diplomatic and consular missions in the UK. If we had good reason to believe that any such person was likely to engage in unlawful activities he would normally be made *persona non grata* under Article 9 before arrival. This procedure has been followed in certain cases. A wider system of requiring prior notification would not be enforceable under the Vienna Convention (Article 10.2 provides for it only "where possible") and would be administratively cumbersome without necessarily providing useful information on which effective action could be taken. The visa requirement effectively provides advance notice in cases where it is most likely to be needed.

23. Missions are now asked to specify who a new arrival is replacing. If there is no such person, the mission is asked to explain the functions of the new appointee. Even if there were a previous incumbent we do not necessarily accept that he should automatically have a successor. The information also enables a double check to be carried out on the termination of appointments.

24. We have considered the possible merits of requesting *curricula vitae* in addition to those normally provided for Heads of Mission, Defence Attachés and Consuls heading Consular posts. We have studied the experience of one other country which has requested these for some years. The country concerned has never rejected any appointment on the basis of information in them. Our own experience (e.g. with Defence Attachés) suggests that the information given is likely to be sketchy and unrevealing. We have therefore concluded that *curricula vitae* would be of no more than marginal benefit in identifying members or prospective members of diplomatic missions likely to engage in unacceptable activities. We will however be prepared to seek them in individual cases in respect of countries where political circumstances make it desirable.

25. Any notification of a person whose relationship to the new official is other than that of spouse or minor child is queried. The Vienna Conference tried, but failed, to reach agreement on a definition of "members of the family forming part of the household". Our practice is to accept children aged 18 or over provided they are clearly resident with the member of the mission (including students) and not engaged in employment on a permanent basis. In exceptional circumstances other relatives, e.g. dependent parents living with the member of the mission, are accepted. Our acceptance or rejection of a notification is not in itself conclusive of status. In doubtful cases it is for a court to rule on the status of a dependant should he for instance be accused of a criminal offence.

26. The Government have generally regarded all locally engaged staff as "permanent residents" of the UK and treated them accordingly for the administrative purposes of the Diplomatic Privileges Act 1964. Attempts made to classify as non-permanent residents those appointed or previously employed on a locally engaged basis are normally queried and often refused unless convincing evidence is provided that they should properly be regarded as overseas based. The status of locally engaged staff that come to our attention in connection with the immigration rules is also queried.

27. The Government's objective is to prevent abuse rather than deal with it after it occurs. In this spirit we have revised and strengthened our notification requirements and procedures, within the limits set by the Convention. These have been spelt out in detail and sent to Heads of Mission. They cover all the five points in para 19 above. In accordance with the views expressed by the Committee (paras 60–67) the FCO will take all practical steps to ensure that they have appropriate information, at as early a stage as possible, on all staff newly appointed to diplomatic missions in London.

Size of Diplomatic Missions

28. The Government have reviewed the practical and legal options available to limit the size of diplomatic missions under Article 11.1 of the Vienna Convention. This reads:

> "In the absence of specific agreement as to the size of the mission, the receiving state may require that the size of a mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the receiving state and to the needs of the particular mission."

Two different approaches have been considered:

(*a*) the development of a policy of applying ceilings across the board on all missions;

(*b*) the limiting of the size of individual missions to levels we regard as appropriate to our relations.

29. We have over the past 15 years imposed ceilings on a number of diplomatic missions in London. But we have concluded that a general policy of restrictions cannot be justified. There has been no overall increase in the size of diplomatic missions in the UK in the past 10 years. The majority of them do not abuse their immunity and the level of unacceptable activities would not necessarily be reduced by imposing overall limits. Such a policy could make us vulnerable to reciprocal action, and retaliation against British missions overseas would almost certainly follow.

30. The Government accept the Committee's view of the need to be "significantly readier than in the past to use the power to limit the size of a mission in cases where there is cause for significant concern about the overall nature of the mission's activities" (para 59). We have concluded that a case by case approach remains the most appropriate means of dealing with existing problems of abuse or potential abuse. The discretion to limit the size of individual missions has been extended in the past year in certain cases and will continue to be applied in the future where there are grounds for doing so and British interests will not be at undue risk. Account has to be taken of the general state of, and likely impact on, bilateral relations with the country concerned and the likelihood of retaliation in some form. Where formal ceilings are already in force they will be rigorously applied.

31. There are no objective criteria for considering what might be regarded as a "reasonable and normal" size for a particular mission and for considering whether a limit should be imposed. We apply one or more of the following criteria:

(*a*) active involvement in espionage or terrorism, the two major categories of offence which clearly require exemplary action. In these cases those directly involved are expelled. Specific ceilings may also be imposed since the mission has no need for those "diplomats" whose activities are not properly diplomatic. A ceiling was placed on the Soviet Union in 1971 following the expulsion of 105 Soviet officials for "inadmissible activities";

(*b*) the pattern of behaviour of certain missions, or Governments, which suggest possible future involvement in unacceptable activities. In effect this means imposing, or possibly agreeing, ceilings *before* any offence or incident;

(*c*) a numerical comparison between the size of a mission in London and that of a UK mission in the country concerned. This yardstick is not normally in itself sufficient to justify action without taking into account the reasons for any significant discrepancy. Diplomatic missions in London are in many cases larger than the corresponding British missions overseas. This reflects the particular importance of London as an economic, financial and political centre, including the Headquarters of various international commodity organisations. Moreover some missions use London as a base from which to cover other countries in addition to the UK.

In the light of these criteria and the wording of Article 11, we have reviewed the sizes of individual missions in London and are querying staff levels in certain cases with a view to obtaining a reduction in a number of cases. We will continue to pursue this approach.

32. It is preferable as a general rule not to publicise the imposition or details of specific ceilings on individual missions unless there is some special reason for doing so. In most cases public disclosure of a ceiling is likely to exacerbate already strained relations and be more likely to attract retaliation for reasons of public face. In some cases however the reasons for it can serve a useful purpose by showing up a particular type of activity as unacceptable or to deter others from practising it. We shall be ready to use it in any case where it is appropriate to do so.

Diplomatic Premises

33. The Government have considered whether it would be possible, legally and practically, to exercise greater control over the premises of diplomatic Missions in London; whether limitations can be placed on their number, location or management; and whether specific measures can be taken to prevent or limit abuse.

34. Under Article 22 of the Vienna Convention on Diplomatic Relations not only are the premises of diplomatic Missions inviolable, but the receiving State has a special duty to take all appropriate steps to protect them. Similar provisions apply to the private residences of diplomatic staff (Article 30), and of administrative and technical staff unless they are nationals of or permanently resident in the receiving state (Article 37). Moreover, the receiving state should facilitate the acquisition of premises or otherwise assist the sending state in obtaining accommodation (Article 21). If diplomatic relations are broken, and even in the case of armed conflict, the receiving state is still required to respect and protect the premises of a Mission, though the sending state may entrust the custody of the premises to a third state acceptable to the receiving state (Article 45).

35. A further relevant factor is that under Article 23 " the sending state and the Head of Mission shall be exempt from all municipal dues and taxes

in respect of the premises of the Mission, whether owned or leased, other than such as represent payment for specific services rendered". Article 1(i) of the Vienna Convention defines the premises of a diplomatic Mission as the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the Mission including the Head of Mission's residence. Under Articles 30, 34 and 37, the residences (in connection with their work for the Mission) of all diplomats and members of the administrative and technical staff and their families are given inviolability and rating relief.

36. Claims for rating relief are made to the FCO with full details of the premises and a statement on the purpose for which they are to be used. Buildings for properties that we accept as constituting premises of the mission qualify for rating relief and are also regarded as having diplomatic status. They are therefore entitled to inviolability and protection. Some buildings or properties constitute diplomatic residences even if rating relief has not been sought, e.g. because it is the residence of a diplomat where rates have been included in the rent. Some, but not all, the addresses of these properties are made known to the FCO on the form notifying a diplomat's arrival.

37. The main concern relates to incidents of an unacceptable nature such as terrorist attacks or demonstrations that take place in or near diplomatic premises. Because of the immunity of the premises the police are unable to enter and search them for evidence of criminal offences including public order offences and illegal possession of firearms or explosives except with the permission of the Head of Mission or the diplomatic occupant. Apart from the risk of demonstrations or violent attacks the existence of diplomatic premises can also give rise to a number of lesser inconveniences, such as disregard of planning or public health legislation, general obstruction or parking offences in the immediate neighbourhood.

38. Problems concerning diplomatic premises are often caused by the behaviour of the occupants but some can be related specifically to their number, location, general management or use. These are considered below:

(a) *Number*. Of the 147 Governments in diplomatic relations with the UK, 132 have diplomatic missions resident in London. (In addition 18 of the 28 international organisations established in the UK have inviolable premises.) Many missions have several separate office premises; the reasons for this include convenience for specific functions, cost and availability. Inviolability also applies to the individual residences of all diplomatic and administrative and technical staff;

(b) *Location*. There is no power under British law to control the location of diplomatic premises and therefore no legal means of preventing missions from establishing premises in areas which might pose risks for security, public order or traffic and crowd control arising from demonstrations or other incidents. Existing planning permission procedures, which are administered by Local Authorities and subject to public enquiry and appeal, can only be used on planning grounds, i.e. land use and public amenity;

(*c*) *Management.* Diplomatic Missions are expected to comply with UK laws and regulations concerning planning permission, listed buildings' consent and building regulations, and in practice most do so. However the management of empty premises, for instance after relations have been broken, can cause problems;

(*d*) *Use.* Premises of the mission are defined by the Vienna Convention as premises "used for the purposes of the mission" (Article 1(i)). The functions of a mission as described in Article 3 include "promoting friendly relations between the sending state and the receiving state, and developing their economic, cultural and scientific relations". A mission's functions can therefore cover wide and sometimes ill-defined areas of activity.

39. We are taking the following measures to tackle these problems:

(*a*) we will take appropriate administrative action in the event of abuse or suspected abuse, including withdrawal of diplomatic status from existing premises where they are not being used for purposes compatible with the legitimate functions of a mission. As a general rule we regard the following types of activity as being incompatible with the functions of a mission: trading or other activities conducted for financial gain (e.g. selling tickets for airlines or holidays, or charging fees for language classes or public lectures) and educational activities (e.g. schools or students' hostels);

(*b*) we have tightened the procedures on notification of the addresses and occupiers of all diplomatic premises, including residential properties. Normally we are notified of these addresses as part of a claim to rating relief and in that context they have always been carefully scrutinised. In the absence of legislation we cannot however stipulate that any premises or properties not so notified are not inviolable. Under the Vienna Convention the status of premises depends on use for mission or residence purposes. A court would therefore recognise diplomatic status even without notification if it should be in issue in legal proceedings;

(*c*) we have considered whether any existing diplomatic premises are being used for purposes which, although in themselves legitimate and even Governmental in character, are not properly diplomatic as the term is understood in the Vienna Convention and international practice. In the case of separate Tourist Offices our application of the phrase "premises of a mission" may have been more generous than is strictly required by international law. Most other countries do not accord them diplomatic status. We therefore believe it is right in principle no longer to accord diplomatic status to separate Tourist Offices. With these considerations in mind we intend to withdraw diplomatic status from the small number of Tourist Offices in London that currently hold it;

(*d*) The Government has under active consideration proposals for legislation to control in exceptional circumstances the acquisition and disposal of diplomatic premises in London. The proposals now under consideration would enable the Secretary of State for Foreign and Commonwealth Affairs:

(i) to require diplomatic missions to obtain his express consent before office premises acquired by them, or following a change of use, could be regarded as premises "used for the purposes of the mission", and therefore entitled under the Diplomatic Privileges Act to inviolability and rating relief;

(ii) to provide that such consent could be withdrawn in respect of existing premises in certain circumstances and that the premises would then cease after a specified period to be premises of the mission (with consequent loss of inviolability and rating relief);

(iii) to acquire the title, after a further specified period, of premises formerly used for the purposes of a diplomatic mission which the Government concerned refused to dispose of (with a view to selling the premises and remitting the proceeds to the foreign Government in question).

The Government regard these proposals as fully consistent with all their obligations under the Vienna Convention. We have made careful comparisons with laws and practice of other countries and in particular the United States Foreign Missions Act 1982;

(*e*) we have also considered whether new measures are required to prevent demonstrations disrupting the peace of diplomatic missions or impairment of their dignity (as required under Article 22), or becoming so provocative as to lead to violent incidents. The Government fully share the Committee's view (paras 45–52) that the UK's duty to protect the peace of diplomatic missions cannot be interpreted so widely that no demonstrations are allowed outside them. The Government also agree with the Committee that the essential requirements are that the work of the mission should not be disrupted, that mission staff are not put in fear, and that there is free access for both staff and visitors. How each demonstration is policed in order to ensure that these requirements are met without undue infringement of freedom of speech is primarily a matter for the police. There are some 350 demonstrations a year outside embassies in London. In most cases the police keep demonstrators on the opposite side of the road from a mission so the question of Article 22 being breached seldom arises. But the practice varies in special circumstances (such as the holding of a function at the embassy). The Police are the best judges in each case of the controls required: how to preserve the peace and dignity of a mission is essentially a matter of sensible policing practice rather than a question of law. Only rarely will consultation with the Home Office and the FCO be required, e.g. at time of increased tension. The police already have powers to deal with demonstrations and marches outside mission premises. These include their statutory powers under the Public Order Act 1936 to control marches which may result in serious public disorder and to prevent obstruction of the highway; and their common law powers to control numbers or to disperse an unlawful assembly when a breach of the peace has occurred or is reasonably apprehended. The general law of demonstrations is, however, being considered in the context of the public order review, whose conclusions the Government expect to announce shortly.

40. The Committee's suggestion (paras 125–126) that the liaison arrangements between the police, the Home Office and the FCO are inadequate was made specifically in the context of the change of policy towards demonstrations outside South Africa House. As the Committee correctly notes, this change of policy was decided independently by the Metropolitan Police and the FCO were not consulted. The police have agreed that in future they will consult the Home Office and the FCO before introducing any change of policy in relation to the policing of demonstrations outside missions. The policing of a demonstration on the day will continue to be left to the operational judgment of the police commander on the spot.

Diplomatic Bags

41. The Government share the concern expressed by the Committee on abuse of the diplomatic bag (paras 25–38). We have carefully considered measures that might be taken to prevent such abuse. In particular we have examined whether it would be desirable and if so practical to seek international agreement for restrictions on the use of the bag and to introduce scanning.

42. Article 27.4 of the Vienna Convention states that a diplomatic bag "may contain only diplomatic documents or articles intended for official use". This phraseology is clearly open to wide interpretation. A restrictive revision or modification of the rules in the Vienna Convention on Diplomatic Relations would significantly improve our ability to reduce abuse of foreign diplomatic bags entering and leaving the UK. The parallel Convention on Consular Relations contains provision to enable a state suspecting that a bag contains illicit material to request that it be opened in the absence of an authorised representative of the sending state. If this request is refused the bag must be returned to its place of origin. This possibility of challenge and supervised search also existed for diplomatic bags in customary law before the Vienna Convention on Diplomatic Relations.

43. In the Government's view it is unacceptable that bags should be used to transmit items prohibited in UK law whether or not it is claimed that they may be "for official use". We do not accept for instance that weapons may be imported by bag since the use of firearms for personal protection of diplomats is not permitted in the UK. It could nevertheless be desirable in principle to seek a restriction that would in specific terms exclude from the bag a limited number of items whose unauthorised import or export does not conform to local laws and regulations, regardless of any claim that they may be intended for official use. In the UK guns and explosives as well as narcotics would fall into this category. Under such a restriction, if a state had serious reason to suspect a bag contained any of these prohibited items, it could demand that it be opened or returned to the place of origin.

44. To be effective any agreed limitation on the use of the bag would have to carry with it the possibility of challenge. Even if no challenge were carried out, the very existence of a possible threat to do so could in itself be a deterrent against serious abuse. In practice any actual challenge could normally be expected to lead to the return to the sending authority of a suspect bag rather than agreement to submit to search.

45. The major difficulty would be the certainty of reciprocal action against British diplomatic bags with consequent prejudice to the security of our confidential correspondence and system of communications. Our bags could be put at indiscriminate risk of harassment and disruption while traffic by others in arms or drugs or other prohibited items would not necessarily be prevented. Even if it were reduced, there are other doubts about the practicality and effectiveness of a challenge and search provision. Diplomatic missions would not be deprived of their ability to acquire illicit items from other sources. Furthermore the limits of any action against suspect bags would be difficult to define. The simple opening of a bag, whether it be a hand held pouch or larger container, would be unlikely in itself to reveal the object of suspicion. Little practical purpose would be served if it could not apply to packages within a bag at least to the point where the nature of its contents became clear. There would be risk of breaching other provisions in the Vienna Convention, e.g. Article 24 on the inviolability of archives and documents and Article 27.1 on permitting and protecting free communication.

46. Thus any formal restriction on the content or use of bags would have both advantages and disadvantages for the UK. Even if it were desirable to proceed in this way, we would not find easy or universal acceptance. There is widespread concern internationally to prevent improper use of the bag and a number of states are anxious about threats to their own security arising from it. But there is a marked reluctance to take any action that could endanger the security of communications. A particular difficulty is that many states see no objection in principle to the carriage of arms in diplomatic bags for personal defence. As the Committee have clearly recognised, the practical and procedural difficulties involved in securing a restrictive amendment are formidable.

47. This has not inhibited the Government from making plain its concern about abuse of the bag in a variety of international meetings and bilateral exchanges over the past year. The question has been, and remains, under scrutiny within the European Community. The International Law Commission (ILC), which was responsible for the preparatory work leading to the Vienna Convention, is currently considering new draft Articles on the status of the courier and the diplomatic bag. It is the best forum for pursuing detailed work on limiting the use of the bag. The need to prevent abuse of the bag for the illicit importation of firearms, explosives and drugs was expressed by the UK representative in the Sixth Committee of the UN General Assembly in November 1984 with a view to further study by the ILC.

48. Whatever measures it may prove possible to achieve internationally to curb abuse of the bag, the Government remain ready to deal promptly and

firmly with any exceptional cases. For instance, where the evidence is good that the contents of a bag might endanger national security or the personal safety of the public or of individuals the Government will not hesitate to take the necessary action on the basis of the overriding right of self defence or the duty to protect human life. This latter consideration applied in the case of the attempted abduction of Mr. Umaru Dikko and would have done so even if the crate in which he was found had in fact constituted a diplomatic bag. We note that the Committee welcomed this.

49. The Government have meanwhile taken administrative measures to tighten up safeguards within the Vienna Convention against abuse. Article 27.4 states that "the packages constituting the diplomatic bag must bear visible external marks of their character". In October 1984 diplomatic missions in London as well as HM Customs & Excise were given revised clarification of our rules on the identification (including labels and seals) and the handling of foreign diplomatic bags. These rules, which reflect international law and practice, are being rigorously applied in the UK and ensure that we are able to check the official origin and endorsement of all items purporting to be diplomatic bags.

50. *Scanning of Bags*. The Government have given detailed and careful study to the arguments in favour of scanning and to the Committee's recommendation that we should be prepared to scan bags on specific occasions if in our judgment the need arises (paras 29–33). There is no reference to scanning in the Vienna Convention. In our view this does not rule it out, though it is arguable that any method for finding out the contents of a bag is tantamount to opening it, which is illegal. Since however we do not regard scanning as unlawful we have considered whether it would provide an effective and practical solution to the problem of abuse of diplomatic bags. We have also taken into account the risk of retaliation against our own bags.

51. Scanning could in theory deter some abuse, especially if a threat to scan were made explicit. When carried out it might also detect the outlines of certain articles that could provide grounds for suspicion. Those grounds would however need to be extremely strong to justify moving to the further step of requesting a search. Moreover a determined sending state could in particular instances take steps to disguise suspect contents. Thus scanning in itself would only be of limited practical value. It might reveal a problem but it could not solve it. These limitations are widely recognised internationally.

52. A major disadvantage of scanning is that it would make our own bags vulnerable to generalised and indiscriminate challenge. For security reasons we could not allow the protection of our bags to be impaired. These reservations are shared by many other Governments and international opposition to the introduction of scanning would be considerable. The element of uncertainty and the potential disruption that could be caused, either by retaliatory action or by a widespread introduction of such a practice, could seriously undermine our freedom of communication.

53. Because scanning would not be a wholly effective procedure and because of the consequences for our own bags the Government have decided against the introduction of scanning as a matter of routine. We accept however the Committee's view that there may be circumstances in which it may be helpful. We will therefore be ready to scan any bag on specific occasions where the grounds for suspicion are sufficiently strong.

Individual cases would require specific authorisation from the FCO and would be treated strictly on their merits. A representative of the sending state would be notified of an intention to scan a particular bag and be notified to be present. Should the sending state not wish the bag to be scanned it would be required to return the bag to the originator.

54. *Recording Size and Weight of Bags.* The Committee suggested that there was no reason why records should not be kept of the size or weight of diplomatic bags entering the country in the care of diplomatic courier or airline pilot and recommended that this henceforth be done (para 35).

55. The Government do not believe that keeping records of this sort would be effective in providing additional information that would enable a pattern to be established for the purposes which the Committee have in mind. For instance firearms or drugs or other illicit items can be concealed in relatively small bags. The weight and size would thus be irrelevant. There are good operational reasons for heavy items such as transmitting equipment to be sent at irregular intervals thus creating an irregular pattern of size and weight of bags. Sending states could in any case deliberately change the patterns.

56. Under the present arrangements all incoming diplomatic bags must be presented to a Customs and Excise Officer before removal from the place of importation. HM Customs and Excise have indicated that in practical terms it would be possible to carry out the additional task of recording the size and weight of each bag, but any such requirement would be administratively cumbersome and it would be difficult to determine patterns on which any further action could usefully or effectively be based. It would also have to cover both accompanied and unaccompanied bags. The Government however accept that it could be useful to arrange for the recording of the weight and size of individual bags in certain circumstances or for limited periods. We will be ready to take such action where there are specific grounds for doing so.

Immunity of Diplomats from Jurisdiction

57. The Government have reviewed carefully the application in the UK of the provisions of the Vienna Convention relating to immunity from criminal and civil jurisdiction. In particular the statistics on alleged serious offences by diplomats and the criteria for handling individual cases have been closely examined. We have also noted the Committee's views (paras 39–44).

58. The Vienna Convention on Diplomatic Relations substantially limited the immunities formerly enjoyed within the UK by staff of diplomatic missions. (Under previous English law, the Diplomatic Privileges Act 1708, complete immunity from all criminal and civil jurisdiction was given to all members of missions, including domestic service staff and to private servants). The tone is set in the Preamble to the Convention which states that: " the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing states ". Article 29 provides that " the person of a diplomatic agent shall be inviolable ". The concept of inviolability covers *inter alia* immunity from "any form of arrest or detention ". A diplomatic agent is also immune from " the criminal jurisdiction of the receiving state " and, with exceptions in regard to certain private matters, from its " civil and administrative jurisdiction " (Article 31.1). Moreover similar immunities are enjoyed by " the members of the family of a diplomatic agent forming part of his household " provided they are not nationals or permanent residents of the receiving state. These immunities persist when the appointment ends until the diplomat leaves the country or has had a " reasonable period " in which to do so, even in the case of armed conflict.

59. Members of the administrative and technical staff and their families also enjoy personal inviolability and the same immunities except that their immunity from civil jurisdiction does not apply to " acts performed outside the course of their duties ". Members of the service staff have immunity only " in respect of acts performed in the course of their duties ".

60. Statistics were provided to the Foreign Affairs Committee (and are published in their report) on alleged serious offences by persons entitled to diplomatic immunity in London for which, in the absence of that immunity, charges would have been brought. For these purposes the Home Office defined as a " serious offence " any that would in certain circumstances carry a maximum penalty of six months or more imprisonment. Of the 546 such offences alleged to have been committed in the 10 years from 1974 to May 1984 some 40 per cent were for theft (mainly shoplifting) and another 40 per cent were road traffic offences (mainly driving under the influence of drink). In the period January 1982 to May 1984 there were 123 such cases. 62, i.e. just over 50 per cent, were road traffic offences. 41, i.e. 33 per cent, were theft (mainly shoplifting) of which 30 involved dependants (wives and children). Since the cases were not brought to court the offences cannot be regarded as proven. The vast majority would have been unlikely to lead to any custodial sentence, let alone six months imprisonment. They resulted in 24 withdrawals of the diplomat from post at the request of the FCO, plus a further nine following our representations or on the initiative of the Head of Mission. In a few of the cases the same person committed more than one offence.

61. Alleged cases of serious offences involving diplomats should be kept in perspective. As the Committee noted, they are comparatively small in percentage terms. For instance in 1983, the last complete calendar year for which statistics are available, the 15,000 or so persons entitled to diplomatic immunity for acts of a personal nature were allegedly responsible between them for 59 serious offences. These included:

(*a*) 33 road traffic offences, of which 30 were for driving under the influence of drink or drugs (about 1 in 500). The total number of persons found guilty of drink-driving offences in England and Wales in 1983 was 98,016;

(*b*) 16 theft, of which 14 were shoplifting (about 1 in 1000). The total number of shoplifting cases in England and Wales in 1983 was 235,512, including around 25,000 in the London Metropolitan area. 13 of the 14 such offences involving persons entitled to diplomatic immunity were committed by dependants, many of them juvenile. The amounts involved were in most cases petty, often less than £20. If they had involved non-entitled persons many of these cases would be likely to have resulted in no more than a conditional discharge or at most a minor fine.

NB

62. Of course, criminal offences by those entitled to immunity and serving in a representative capacity cannot be condoned. The main abuse lies, not so much in the comparative number of alleged offences (which is small) or in their relative gravity, but in the reliance on immunity to protect individuals for offences without any obvious connection to the efficient performance of the functions of a diplomatic mission. This applies to most cases involving dependants as well as to many particular types of case, especially theft from shops. However claims to immunity in doubtful cases are seldom tested in court, e.g. where dependants are involved or where the person concerned might be found to have permanent resident status (and therefore no entitlement to immunity).

63. Guidelines for practice in the UK were set out in the following terms in the report on Diplomatic Immunity presented by the then Secretary of State for Foreign and Commonwealth Affairs to Parliament in 1952:

> "... If a person possessing diplomatic immunity is alleged to have committed a criminal offence and there is a *prima facie* case which, in the ordinary way, would lead to the institution of a prosecution, the Foreign Office approaches the foreign mission concerned and, unless the offence is such that it is considered that an admonition by the Head of the Mission is sufficient, the Foreign Office requests a waiver of immunity in order that the case may be tried, on the footing that, if the immunity is not waived, it may be impossible for the Foreign Secretary to continue to accept the individual concerned as a person possessing diplomatic status in this Country".

The practice of seeking a waiver or, in appropriate cases, the withdrawal of the official concerned has been consistently followed in subsequent years. All missions have been treated on a similar basis.

64. In each case the normal procedure is to take into account the strength of available evidence (usually from detailed police reports), the degree of gravity of the alleged offence, whether it was a first or subsequent one, aggravated for example by violence or injury or committed by a dependant, the likely penalty which an offence would have received in the absence of immunity, the recommendation of the Home Office, legal advice (where appropriate) and any other relevant considerations.

65. A diplomat is not able to waive his own immunity. Waivers can be granted only by the sending state, which means that even a Head of Mission will normally consult his home Government. In drink/driving cases a waiver, even if granted, will come too late to allow the necessary medical evidence for conviction to be obtained. A person entitled to diplomatic immunity cannot because of his inviolability under Article 29 be required to undergo a breath test or other medical examination.

66. In view of the nature and extent of abuse, we have examined whether it would be feasible (or even desirable) to obtain agreement either internationally or bilaterally to restrict diplomatic immunity to cover only actions performed in the course of official duties (on the lines of the Vienna Convention on Consular Relations), or alternatively to exclude certain types of offence. We have however found no support within the European Community or elsewhere for the idea of bilateral or limited mutual agreements to waive immunity either generally or in specific cases. There would in any case be a risk that a restriction on immunity could in certain countries be exploited for political or retaliatory purposes against British diplomats and communities overseas.

67. We have therefore implemented the only realistic alternative. That is to introduce an improved and more detailed code of practice based on a strict application of the measures available under the existing provisions of the Vienna Convention. The main objective is to achieve a better standard of behaviour and a reduction in the number of offences for which immunity can be claimed. In practice this has meant a tightening of the criteria and their application in the handling of individual cases, and specific warnings to missions and individual diplomats about the consequences.

NB

68. Heads of Mission were informed in August 1984 of the statement by the Secretary of State for Foreign and Commonwealth Affairs to the Foreign Affairs Committee of 18 July that "it would be right in future to expect and to apply more stringent standards". They were in particular ① asked for co-operation in waiving immunity or arranging for the withdrawal of any members of staff who may be responsible for serious offences. In accordance with the Committee's recommendation (para. 44), specific guidance is now being issued to all diplomats newly appointed to London ② on the attitude likely to be taken in the event of any breach of UK laws and regulations, including driving and shoplifting offences. They are asked to ③ ensure that dependant members of their families are aware of this guidance. It has also been brought to the attention of existing staff of diplomatic missions.

69. As a general rule espionage and incitement to or advocacy of violence require an immediate declaration of *persona non grata*. Those involved in violent crime or drug trafficking are also declared *persona non grata* unless a waiver of immunity is granted. In addition the following categories of offence normally lead to a request for withdrawal in the absence of a waiver:

(*a*) firearms offences;

(*b*) rape, incest, serious cases of indecent assault and other serious sexual offences;

(*c*) fraud;

(*d*) second drink/driving offence (or first if aggravated by violence or injury to a third party);

(*e*) other traffic offences involving death or serious injury;

(*f*) driving without third party insurance;

(*g*) theft including large scale shoplifting (first case);

(*h*) lesser scale shoplifting (second case);

(*i*) any other offence normally carrying a prison sentence of more than 12 months.

The criteria for dealing with alleged offences are applied with both firmness and discretion but not automatically. Full account is taken of the nature and seriousness of the offence and any inadequacies in the evidence.

70. Reminders have regularly been sent to missions in recent years on regulations relating to the import, acquisition, possession and use of firearms and the grave view that is taken of any deliberate breach. In June 1984 missions were warned that a breach would normally result in a request for withdrawal of the offender. They were also told that firearms certificates would not be issued for weapons for use by security staff of missions or personal protection of individuals. They are well aware of the rôle of the Diplomatic Protection Group and the care taken by the Government to fulfil their responsibility to provide appropriate security protection.

71. The application of more stringent standards together with the clarification of guidelines and criteria should lead to a reduction in the number of serious offences involving diplomats and members of their families. The onus is on missions and individuals to respect the basic ground rules or face the consequences. Where a diplomat is transferred because of involvement in a particularly serious criminal offence, the Government will also consider the possibility of reducing a mission's size with regard to the criteria already set out in para 31.

72. A serious view is also taken of any reliance on diplomatic immunity from civil jurisdiction to evade a legal obligation, or to impose on another party to a dispute the person's own view as to liability. Many difficulties over civil claims however arise because of a dispute as to liability or a failure to secure remission of necessary funds from overseas. Again each case has to be treated individually, but the FCO remain ready to make representations calling for a waiver of immunity or for private arbitration where immunity from civil jurisdiction has prevented settlement of an apparently valid claim and where a direct approach to the Head of Mission has yielded no result.

73. UK staff serving overseas are expected to respect the laws and regulations of the receiving state in accordance with Article 41 of the Convention. The Government would not maintain diplomatic immunity from criminal jurisdiction in cases where a waiver would be without prejudice to the work of the mission and the fair treatment of the individual.

Parking offences

74. The Government are seriously concerned at the high level of fixed penalty notices (i.e. parking tickets) automatically cancelled on grounds of diplomatic immunity. Detailed statistics for 1981–1983 were given on 13 February 1985 in a Written Answer by the Parliamentary Under-Secretary of State at the Home Office, Mr. Mellor. In 1983, the last complete calendar year for which figures were then available, they amounted to 102,179. The 1984 figure, when confirmed, is likely to be in the region of 109,000. Figures for 1983 and 1984, which are double those for 1979 and 1980, have reached unacceptable levels. (The proportions have also risen. In 1982 2·9 per cent of the overall total of parking fines in Greater London was incurred by diplomats. In 1984 this was 4·3 per cent.) At least half relate to official cars.

75. Numerous methods of dealing with the problem have been considered in recent years. Some have been rejected on legal grounds and others for practical reasons. Others again have been put into effect but their success has only been limited.

76. Heads of Mission have repeatedly been urged to recognise the special problems that exist in London and to ensure that both their official drivers and their diplomatic staff obey the parking regulations. They have been warned of the disrepute brought upon the Diplomatic Corps as a result of a widespread flouting of these regulations, of the inconvenience caused to local residents in predominantly residential areas such as Kensington, Knightsbridge and Belgravia where the offices of many diplomatic missions are situated, and of the fact that British diplomats serving overseas are expected to pay their fines. Some missions, because of their physical location, have particular difficulties. Some incur very few fines and a small minority require their staff to pay. Regrettably however requests for co-operation have been widely disregarded.

77. In May 1983 wheel-clamps were introduced on an experimental basis in certain parts of Central London. Our initial view was that the wheel-clamping of a car which could be identified by its number plate as belonging to a diplomatic mission or a diplomat was not ruled out by the wording of Article 22.3 of the Vienna Convention, which states that ". . . the means of transport of the mission shall be immune from search, requisition, attachment or execution". It became clear however that clamping (unlike towing away) is a measure which must be regarded as penal in intent and effect, and thus contravenes Article 31.1 of the Vienna Convention, which provides that a diplomatic agent shall enjoy immunity from criminal jurisdiction of the receiving state. The Minister of State for the Home Department, Lord Elton, therefore announced in the House of Lords on 12 December 1983 that the clamping of cars belonging to diplomats would be discontinued.

78. At the same time Lord Elton announced a number of administrative measures whose purpose was to control acquisition of duty-free vehicles but which also had the effect of reducing the number of cars on the streets with number plates indicating an entitlement to full diplomatic immunity.

When these measures have taken full effect, there should be about 900 or 16 per cent fewer such cars on the streets than hitherto. Duty-free cars belonging to persons not entitled to personal immunity from criminal jurisdiction are liable to incur parking fines and to be wheel-clamped if illegally parked.

79. In addition at least 200 cars belonging to diplomats have been towed away every year over the past few years before wheel-clamping was introduced in 1983. Since then the figures have been somewhat lower. Where the purpose is to relieve obstruction or danger towing away is entirely justified under the Vienna Convention. In so far as resources permit this policy will be vigorously pursued.

80. The Government are determined to reduce very substantially the present level of illegal parking by diplomatic vehicles. In view of the limited results of earlier methods and the legal obstacles to wheel-clamping, the FCO have notified Heads of Mission in London that persistent and deliberate failure by individual diplomats to respect parking regulations and to pay fixed penalty notices will henceforth call into question their acceptability as members of diplomatic Missions in London. Similar considerations will also apply to drivers of official cars. From 1 May 1985 detailed records of unpaid parking tickets incurred by all cars with diplomatic registration plates, both official and private, will be kept. Where necessary, particular cases will be drawn to the personal attention of Heads of Mission with a warning about the possible consequences. Further unpaid parking tickets incurred by individual cars will lead to a request for the transfer or the withdrawal of the offender.

Matters Relating to the Libyan People's Bureau

81. The Government have carefully studied the Committee's observations on matters relating to the FCO's handling of relations with the Libyan People's Bureau 1979–84 (paras 68–105). The Committee concluded (para 127 (6)):

"(i) we doubt the wisdom of resuming normal relations with the Bureau in June 1980 in the absence of a clear notification by the Libyan authorities of a Head of Mission;

(ii) even if, as seems questionable, the view that the Bureau was engaged in proper diplomatic functions in June 1980 was reasonable, we consider that in the ensuing three and a half years that initial view became untenable; we conclude that the Government should at some stage in this period have exercised their right under Article 11 of the Convention to limit the size of the Mission;

(iii) as the failure to nominate a Head of Mission—initially at all and later in writing—following the takeover by revolutionary students was deliberate and wilful, it was as a matter of policy undesirable to have treated the Bureau as a diplomatic Mission between February and April 1984 and even occasional contacts with the Bureau should have been dependent upon notification being received;

(iv) following the takeover by the Committee of Revolutionary Students in February 1984, the Government of Libya should have been told much more firmly that if within a brief specified period of time a Head of Mission was not designated in writing, not only would there be no dealings with the Bureau but the Bureau buildings would within a reasonably short period cease to be recognised as premises of a Mission under Article 22 of the Convention."

82. The Government believe that some of these points have been made with hindsight and are based on judgments formed on evidence not available at the relevant time. Some do not fully reflect the evidence available. Specifically:

(i) the decision to recognise one official as equivalent to a Head of Mission was taken in full consultation with several other Western European countries. The Government had no proof of involvement by the Libyan People's Bureau in the 1980 incidents. When the Head of the Bureau commented on them to the press he was immediately declared *persona non grata*. The Bureau could not in practice have been closed without breaking diplomatic relations. The consequences for the large British community in Libya (some 8,000) as well as British commercial interests had to be taken into account;

(ii) in the following three and a half years there were no further incidents of comparable gravity to those of 1980 which would have provided a clear justification for measures against the Bureau. There was no single point in time at which the Government could reasonably have taken a decision to limit the size of the Mission because of unacceptable activities, even if it had been accepted that the imposition of a ceiling rather than declarations of *persona non grata* was the appropriate response to improper activities by individuals;

(iii) the FCO did not deal with the new Committee between February and April 1984 or accept them as diplomats. No notifications of diplomatic appointments were accepted after 18 February. There was no reason to terminate acceptance of those whose appointments had been duly notified to the FCO prior to 18 February and who apparently continued to carry out diplomatic functions. The failure to nominate a Head of Mission was a matter of concern but there was no reason to believe that this was deliberate or wilful. It was not in itself evidence of a failure to perform diplomatic functions. Repeated attempts were made to seek clarification of the position. The British Ambassador in Tripoli finally received oral notification on 9 April of Mr. Fituri as Head of Mission;

(iv) the FCO were concerned at the failure to nominate a Head of Mission and in response confined their dealings with the Bureau to contacts on administrative and Consular matters and representations by the Government about the bombing incidents on 10–11 March (as indicated in the FCO letter to the Committee of 22 November 1984 which was printed as Appendix II of their Report). The situation had no precedent and drastic action, including the setting of a deadline, might have precipitated a hostile Libyan reaction with consequences for the large British community in Libya. It was not legally possible to cease to recognise the Bureau buildings as premises of the Mission while we remained in diplomatic relations with Libya and the buildings were being used for the purposes of the mission.

83. On matters relating to the FCO's handling of events after 17 April 1984 the Committee concluded (para 127(7)):

"(i) whatever answer is given to the question of whether self defence is a concept applicable to the circumstances of St. James's Square, it could not have acted as a lawful basis for the forcible entry of the Bureau premises;

(ii) despite the outrage that had occurred, the bags in principle remained inviolable;

(iii) the decision not to search the Libyan bags was not directed by the requirements of the Vienna Convention (as was commonly supposed), but by the requirements of political judgment; we do not dissent from the judgment that was made;

(iv) the searching of those leaving the Bureau was justified;

(v) we agree with the Government's assessment of their obligations in respect of 5 St. James's Square following its evacuation on 27 April 1984".

The Government accept the Committee's conclusions.

The Attempted Abduction of Mr. Umaru Dikko

84. The Government have studied the Committee's observations on the attempted abduction of Mr. Umaru Dikko (paras 106–113). The Committee concluded (para 127(8)):

"(i) we welcome the Government's acceptance that the inviolability of the diplomatic bag cannot take precedence over human life;

(ii) the Government are, overall, to be commended for their swift and robust handling of the Dikko affair."

The Government accept the Committee's conclusions.

Summary of Conclusions

85. The Government share the concern expressed by the Committee on the abuse of diplomatic immunities and, following a full review of the operation of the Vienna Convention, have accepted all the major recommendations in their Report. The main conclusions are as follows:

(*a*) the Government agree with the Committee that it would be wrong to regard amendment of the Vienna Convention as the solution to the problem of abuse of diplomatic immunities in view of the difficulties of achieving any restrictive amendment and the doubtful net benefit to the UK of so doing (para 11);

(*b*) the Government appreciate the Committee's welcome and support for the efforts made to seek close co-operation with Western Governments and for the progress so far achieved. They will continue to press for further improvement in international co-operation (para 13(*a*)) and, where appropriate, work for modifications to existing international rules to restrict abuse of immunities (para 13(*b*));

(*c*) the Government have implemented a firmer policy towards application of the Vienna Convention as recommended by the Committee (para 17);

(*d*) the Government have revised and strengthened their requirements and procedures on the notification of staff of diplomatic missions (para 28);

(*e*) the Government have used their discretion in the past year to limit the size of individual missions and will continue to do so on a case by case basis (para 30);

(*f*) the Government have taken administrative measures to deal with abuse of diplomatic premises and to limit the extent of mission premises in accordance with international law and practice (para 39(*a*)–(*c*)). Proposals for legislation to control in exceptional circumstances the acquisition and disposal of premises are under consideration (para 39(*d*));

(*g*) the Government accept that demonstrations outside diplomatic missions should be allowed so long as they do not imperil the safety or efficient work of the mission (para 39(*e*)). Consultation by the police with the Home Office and FCO on any change of policy over the policing of demonstrations will be improved (para 40);

(*h*) the Government share the Committee's concern on the abuse of diplomatic bags. Any formal restriction on the content and use of bags would be difficult to achieve and not necessarily desirable because of the reciprocal implications for the security of British bags (paras 43–46). Prompt and firm action will be taken where the evidence is good that the contents of a bag might endanger national security or the personal safety of the public or of individuals (para 48). Administrative measures on the identification and handling of bags have been tightened (para 49);

(*i*) the Government are ready to scan bags and to record their weight and size where there are specific grounds for doing so but not as a matter of routine (para 53 and 56);

(*j*) the Government have clarified the guide-lines on breaches of criminal law by diplomats and their families and the criteria for dealing with them. More stringent standards are being applied (paras 67–71);

(*k*) the Government are taking stronger action to deal with parking offences (para 80);

(*l*) the Government accept some, but not all, of the Committee's conclusions on events relating to the Libyan People's Bureau (paras 81–83);

(*m*) the Government accept the Committee's conclusions on the handling of the attempted abduction of Mr. Umaru Dikko (para 84).

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3. Q: Is legislative action necessary to institute an effective mandatory reporting system for all alleged criminal actions committed by persons qualifying for diplomatic immunity? If so, what legislative recommendations can you make to the Committee?

A. The failure of law enforcement authorities to report alleged crimes committed by persons who have diplomatic immunity is a problem because it affects the Department's efforts to respond properly to such incidents. Unless the Department learns of allegations, it cannot take remedial action, such as suspending driving privileges or ordering the withdrawal of the wrongdoer from the United States. Where the Department knows about such incidents, it can encourage law enforcement authorities to investigate crimes fully to aid in seeking waivers of immunity and compensation from the sending State for the victims. Full investigations also may lay the basis for prosecution where appropriate once a person's diplomatic assignment is over. Accordingly, in "Guidance for Law Enforcement Officers," the Department urges law enforcement authorities to report allegations of serious crimes committed by diplomatic personnel to the Department and provides 24-hour telephone numbers for authorities to call.

While the Department would welcome efforts which would encourage further cooperation and assistance from law enforcement authorities throughout the country, we believe that legislation to accomplish this would not be the most effective way of correcting the difficulties that we currently encounter. We believe that further education, training and liaison with local authorities would be a more effective alternative.

4. Q: Under current law, if a diplomat has been declared *persona non grata* and expelled from the United States, could that individual, at a later date, be accredited to the UN, and would the United States be obliged to receive him under the UN Headquarters Agreement?

A. The United Nations has long accepted that the United States has the right to refuse entry to individuals when there is clear and convincing evidence that they would enter the United States for reasons inimical to United States national security (a principle which is embodied in the Headquarters Agreement). Regarding accreditation, Section 15 of the UN Headquarters Agreement provides, in pertinent part, "(1) Every person designated by a Member as the principal resident representative to the United Nations of such Member or as a resident representative with the rank of ambassador or minister plenipotentiary [and] (2) *such resident members of their staffs as may be agreed upon between the Secretary-General, the Government of the United States and the Government of the Member concerned* ... shall ... be entitled in the territory of the United States to the same privileges and immunities ... as it accords to diplomatic envoys accredited to it" (emphasis provided). Thus the Headquarters Agreement provides us with an ability to deny granting privileges and immunities to the latter category, which represents the majority of persons normally accorded privileges and immunities as members of missions to the UN. With respect to the former category, our experience indicates that we would also prevail in the UN in opposing the granting of full privileges and immunities where the person concerned had previously been declared persona non grata on the basis of serious criminal activity.

Section 13 of the UN Headquarters Agreement contains general provisions which permit, inter alia, the expulsion of UN diplomatic personnel for "abuse of ... privileges of residence," a term not expressly defined but certainly including serious criminal acts. Consistent practice over the years indicates that there would be no opposition to applying this same concept generally to refusal of accreditation in diplomatic status of a person who had previously engaged in such activities in the U.S.

[QUESTION NO. 5 DELETED]

Additional Questions Submitted to Mrs. Selwa Roosevelt By Senator Jesse Helms

1. Q: During the past 5 years, how many times has diplomatic immunity been requested on behalf of U.S. diplomatic personnel serving abroad? How many times has it been granted?

A. United States personnel serving abroad as diplomatic agents, members of the administrative and technical staff, and as consular officers and employees are inherently entitled under international law to a certain degree of immunity from the jurisdiction of courts in the host state depending on the status in which they are accredited by the host state.

Our records indicate that on at least 164 occasions in the past five years the United States Government has actively asserted diplomatic immunity in response to attempts to initiate legal proceedings in the host state against such personnel or their dependents.

Assertions of immunity were more or less equally divided between diplomatic agents and members of the administrative and technical staff of embassies. 25 cases in which immunity was asserted involved dependents.

In response to the Committee's request, the Department queried all posts concerning incidents in which diplomatic immunity has been asserted by the United States Government in the past five years. The above figures are the best information that is available. However, because some posts must limit records keeping to meet emergency evacuation requirements, the information provided may not be complete. Moreover, the above figures would not necessarily reflect those cases in which it was not necessary for the USG to assert immunity due to the failure of the host state or its citizens to initiate legal proceedings against persons known to be entitled to immunity.

The Department of State is not aware of any instance in which a host state has failed to accord diplomatic immunity after it has been asserted by the U.S. Government.

1(a)Q: What are the criteria used by the Secretary of State in determining whether to request of other governments that diplomatic immunity be granted to U.S. diplomatic personnel?

A: The U.S. Government routinely asserts diplomatic immunity in response to any attempt to initiate legal procedures in the host state against U.S. personnel entitled to such immunity.

As this is a matter of established policy and practice, no formal criteria or guidelines are available.

1(b) Q: Have there been any incidents in which the U.S. has waived diplomatic immunity for a U.S. diplomat charged with a criminal offense abroad?

A: Department records do not reflect any instance in which the U.S. Government has waived diplomatic immunity for a diplomatic agent or member of the administrative and technical staff charged with a criminal offense abroad.

2. Q: What happens to U.S. diplomatic personnel in other countries after they have been granted diplomatic immunity? Are they requested by the host country to leave? Does the State Department voluntarily withdraw them from the country?

A: As explained in response to question 1, United States personnel serving abroad as diplomatic agents, members of the administrative and technical staff, and as consular officers and employees are entitled under international law to a certain degree of immunity from the jurisdiction of courts in the host state depending on the status in which they are accredited by the host state.

In the event that the United States Government asserts diplomatic immunity in response to an attempt to initiate legal procedings in the host state against a person entitled to such immunity, the goverment of the host state may request or order that person to leave the country. Of the 164 cases in the past five years in which the United States Government has asserted diplomatic immunity the Departmentof State subsequently withdrew 16 individuals. In one case, a U.S. diplomat departed post after the host country, without formally declaring him *persona non grata*, requested his departure. In all other cases, U.S. personnel or dependents remained at post until the end of their tours of duty, or their sponsor's tours of duty.

3. Q: What happens to U.S. diplomatic personnel whose offenses would be crimes if they had been committed in the United States? Are they punished or disciplined in any way? Are they allowed to continue in careers if they are members of the Foreign Service?

A. It is assumed that the term "diplomatic personnel" as used here refers to those Americans who, as members of a diplomatic mission, possess criminal immunity. Thus, the questions concern alleged offenses by members of the administrative and technical staff of the mission as well as by the diplomatic agents, to use the terms of the Vienna Convention.

Fortunately there have been few members of the U.S. missions who have been charged with crimes at overseas posts. (There have been cases where Federal statutes establish domestic jurisdiction over crimes allegedly committed by staff members of a mission, such as visa fraud or cooperation with espionage agents of the host country. Such cases are discovered by American officials in internal investigations, and the persons involved are brought home for prosecution.)

In general when a Foreign Service employee is accused of committing a crime by the host country, the matter and all relevant facts are referred to Washington for the initial determination whether the employee should be returned summarily. However, the employee automatically will be recalled at the discretion of the United States ambassador, or when the host country declares the employee *persona non grata*.

In any event, it is up to the employing agency (e.g., State, USAID, USIA, Commerce, Agriculture, DoD components, etc.) to determine whether disciplinary action is warranted in the circumstances. In this regard, section 610 of the Foreign Service Act of 1980 authorizes the discharge of Foreign Service personnel for such cause [misconduct] as would promote the "efficiency of the service." The "efficiency of the service" standard is a term of art which has been subject to administrative and judicial interpretation and application for many years. It essentially entails a determination of *employee misconduct* which bears a substantial *nexus* to an employee's federal employment. Such determinations must be made on a case-by-case basis to determine whether the misconduct would reflect on the employee's ability to perform his Federal function and/or reasonably impair the agency's confidence in the employee.

The Department of State maintains standards of conduct regulations which provide for disciplinary action for criminal conduct abroad. The regulations read, in pertinent part, at section 622.10 h., as follows:

> Criminal Conduct
>
> Conduct which violates criminal laws, whether in the U.S. or abroad, will subject the employee to possible disciplinary action or separation. It is the conduct itself and not an arrest or legal judgment of guilt, if any, which may warrant such action. The fact that Foreign Service employees serving abroad may enjoy certain privileges and immunities--no matter how these may vary by category or from country-to-country--. . .[requires the service to impose]. . . an added obligation that each employee scrupulously refrain from activities which, but for diplomatic privilege or courtesy, would subject the employee to local criminal sanctions.

The Department is mindful that employee commission of crimes abroad requires the closest scrutiny and application of disciplinary action to the greatest extent warranted by the circumstances. However, the Department must exercise this authority and function in the context of the judicially established standards, discussed above, which sometimes preclude the taking of extreme or even any disciplinary action against the offending employees. This has not proven to be a problem, however, in the few criminal-type cases which have arisen in the Foreign Service in recent memory.

4. Q: Is the request for diplomatic immunity an admission of guilt on the part of the country requesting the immunity for its diplomat?

A: Once it is determined that diplomatic immunity exists because the person involved holds a status entitling him or her to immunity, immunity continues to exist unless and until the sending State expressly waives it or the person's assignment terminates. Thus, because immunity otherwise applies until it is waived, the question is better understood as whether failure to waive on the part of the sending State constitutes an admission of guilt. The answer to this question is No.

Many factors enter into an assessment by the sending State of whether it should waive immunity. Factors other than guilt or innocence that the sending State might weigh include the person's position at the diplomatic mission and involvement in sensitive materials and operations; whether the act was committed as part of the performance of official duties; whether the sending State's personnel would be treated fairly in the judicial system of the receiving State; and the status of bilateral relations between the sending and the receiving State. Any one of these factors could weigh heavily against waiving immunity, yet none of them has to do with guilt or innocence. Thus it would be difficult to judge whether the issue of guilt or innocence had anything to do with a specific refusal to waive diplomatic immunity.

5. Q: During the past 5 years, how many times has diplomatic immunity been invoked on behalf of foreign diplomatic personnel serving in the United States? How many times have foreign countries waived their right to invoke diplomatic immunity? Please provide a list of all such cases of diplomatic immunity cases -- both those invoked and those waived. Please include the name, title, and country of each individual case as well as the charge(s).

A: The Department's records reflect that from August 1, 1982 to August 5, 1987, excluding traffic offenses, there were 156 allegations of criminal misconduct by persons entitled to criminal immunity. Further details regarding these cases are set forth in the attached documents.

Attachments: Statistics of Alleged Criminal Cases for the period August 1, 1982 - August 5, 1987.

ATTACHMENTS:

STATISTICS

I. Washington Missions

(a) Statistics by alleged criminal case broken down in categories (a) Diplomat, (b) Diplomatic/Dependent, (c) A&T Staff, and (d) A&T Staff Dependent with summary on action taken.

(b) Statistics: summarized by categories (a) (b) (c) and (d).

(c) Statistics: breakdown by year.

STATISTICS

II. Missions to the UN

(a) Statistics by alleged criminal case broken down in categories (a) Diplomat, (b) Diplomatic/Dependent, (c) A&T Staff, and (d) A&T Staff Dependent with summary on action taken.

(b) Statistics: summarized by categories (a) (b) (c) and (d).

(c) Statistics: breakdown by year.

III. SUMMARY STATISTICS:
Total number of Washington Missions and UN Missions.

S/CPR:GG:0483S

SUMMARY

(B)

STATISTICS

Alleged Criminal Cases
August 1, 1982 - August 5, 1987

(Missions in Washington, D.C.)

ALLEGED CHARGE	(A) Diplomat	(B) Dip/Dependent	(C) A&T	(D) A&T/Dependent	Totals
Assault	4	9	3	3	19
Burglary	-	3	-	-	3
Copyright Infringement & Violation of US Customs	1	-	-	-	1
Counterfeiting Money	-	-	-	1	1
Drug Related:					
(a) Trafficking	-	2	-	-	2
(b) Possession	-	4	-	-	4
Embezzlement		-	1	-	1
Forgery	1	-	2	-	3
Harassment	2	-	-	-	2
Disorderly Conduct	-	2	1	-	3
Resisting Arrest	-	-	-	1	1
Robbery/Pocketbook Snatching	-	1	-	-	1
Sex:					
(a) Child Abuse	-	-	1	-	1
(b) Indecent Exposure	2	-	3	-	5
(c) Rape	-	1	1	-	2
(d) Attempted Sexual Battery	-	-	1	-	1
(e) Sexual Assault	-	1	1	-	2
(f) Soliciting	2	-	1	1	4
Shoplifting	4	19	9	8	40
Theft	-	6	2	1	9
Vandalism	-	-	-	1	1
Weapons	5	2	1	0	8
TOTALS:	21	50	27	16	114

(C)

STATISTICS

Alleged Criminal Cases
August 1, 1982 - August 5, 1987

(Missions in Washington, DC)

BREAKDOWN BY YEAR	8/1/82- 12/31/82	1983	1984	1985	1986	1/1/87- 8/5/87	TOTALS
Assault	1	1	5	6	6	-	19
Burglary	-	-	2	-	1	-	3
Copyright Infringement & Violation of US Customs	-	-	-	-	1	-	1
Counterfeiting Money	-	1	-	-	-	-	1
Drug Related:							
(a) Trafficking	-	-	-	2	-	-	2
(b) Possession	1	-	1	2	-	-	4
Embezzlement	-	-	-	1	-	-	1
Forgery	-	2	-	-	-	1	3
Harassment	1	1	-	-	-	-	2
Disorderly Conduct	-	-	1	-	1	1	3
Resisting Arrest	-	-	-	-	-	1	1
Robbery/Pocketbook Snatching	1	-	-	-	-	-	1
Sex:							
(a) Child Abuse	-	-	1	-	-	-	1
(b) Indecent Exposure	-	1	2	-	2	-	5
(c) Rape	1	-	1	-	-	-	2
(d) Attempted Sexual Battery	-	-	-	-	1	-	1
(e) Sexual Assault	-	1	-	-	-	1	2
(f) Soliciting	1	1	1	1	-	-	4
Shoplifting	2	9	4	10	6	9	40
Theft	-0-	2	-	1	3	3	9
Vandalism	-0-	-0-	-0-	1	-0-	-0-	1
Weapons: Possession	-0-	-0-	4	1	2	1	8
TOTALS:	8	19	22	25	23	17	114

(B)

SUMMARY

STATISTICS

ALLEGED CRIMINAL CASES
August 1, 1982 - August 5, 1987

(Missions to the UN Cases)

KEY
(A) = Diplomat
(B) = Diplomat Dependent
*(C) and (D) A&T and A&T Dependent - do not have full criminal immunity.

ALLEGED CHARGE	(A) Diplomat	(B) Dip/Dependent	*C	*D
Assault	8	4		
Drug Related:				
(a) Trafficking	-	3		
Obtaining a Loan Under False Pretenses:	-	1		
Reckless Endangerment	-	1		
Sex:				
(a) Attempted Assault	-	1		
(b) Soliciting	2	-		
Shoplifting	4	6		
Theft	3	4		
Weapons: Possession	3	1		
Weapons: Illegal Purchase and Export	1	-		
TOTALS:	21	21	GRAND TOTAL:	42

S/CPR:0483S

(C)

STATISTICS

ALLEGED CRIMINAL CASES
August 1, 1982 - August 5, 1987

(Missions to the UN Cases)

BREAKDOWN BY YEAR	8/1/82-12/31/82	1983	1984	1985	1986	1/1/87-8/5/87	TOTALS
Assault	-	1	1	1	5	4	12
Drug Related:							
(a) Trafficking	-	1	1	-	1	-	3
Obtaining a Loan Under False Pretenses	1	-	-	-	-	-	1
Reckless Endangerment	-	-	-	-	1	-	1
Sex:							
(a) Attempted Assault	-	1	-	-	-	-	1
(b) Soliciting	-	-		2	-	-	2
Shoplifting	1	2	-	3	2	2	10
Theft	-	2	1	2	2	-	7
Weapons: Possession	-	2	1	-	1	-	4
Weapons: Illegal Purchase and Export	-	-	-	-	-	1	1
TOTALS:	2	9	4	8	12	7	42

SUMMARY
STATISTICS

WASHINGTON MISSIONS AND UN MISSIONS

Alleged Criminal Cases
August 1, 1982 - August 5, 1987

	(A) Diplomat	(B) Dip/Dependent	(C) A&T	(D) A&T/Dependent	Totals
Assault:					
Washington Missions	4	9	3	3	19
UN Missions	8	4	-	-	12
Burglary:					
Washington Missions	-	3	-	-	3
UN Missions	-	-	-	-	-
Copyright Infringement & Violation of US Customs:					
Washington Missions	1	-	-	-	1
UN Missions	-	-	-	-	-
Counterfeiting Money					
Washington Missions	-	-	-	1	1
UN Missions	-	-	-	-	-
Drug Related: (a) Trafficking:					
Washington Missions	-	2	-	-	2
UN Missions	-	3	-	-	3
(b) Possession					
Washington Missions	-	4	-	-	4
UN Missions	-	-	-	-	-
Embezzlement					
Washington Missions		-	1	-	1
UN Missions	-	-	-	-	-
Obtaining a Loan Under False Pretenses					
Washington Missions	-	-	-	-	-
UN Missions	-	1	-	-	1
Forgery					
Washington Missions	1	-	2	-	3
UN Missions	-	-	-	-	-

	(A) Diplomat	(B) Dip/Dependent	(C) A&T	(D) A&T/Dependent	Totals
Harassment					
Washington Missions	2	-	-	-	2
UN Missions	-	-	-	-	-
Disorderly Conduct					
Washington Mssions	-	2	1	-	3
UN MIssions	-	-	-	-	-
Reckless Engangerment					
Washington Missions	-	-	-	-	-
UN Missions	-	1	-	-	1
Resisting Arrest					
Washington Missions	-	-	-	1	1
UN Missions	-	-	-	-	-
Robbery/Pocketbook Snatching					
Washington Missions	-	1	-	-	1
UN Missions	-	-	-	-	-
Sex:					
(a) Child Abuse					
Washington Missions	-	-	1	-	1
UN Missions	-	-	-	-	-
(b) Indecent Exposure					
Washington Missions	2	-	3	-	5
UN Missions	-	-	-	-	-
(c) Rape					
Washington Missions	-	1	1	-	2
UN Missions	-	-	-	-	-
(d) Attempted Sexual Battery					
Washington Missions	-	-	1	-	1
UN Missions	-	-	-	-	-
(e) Sexual Assault					
Washington Missions	-	1	1	-	2
UN Missions	-	-	-	-	-
(f) Attempted Sexual Assault					
Washington Missions	-	-	-	-	-
UN Missions	-	1	-	-	1

	(A) Diplomat	(B) Dip/Dependent	(C) A&T	(D) A&T/Dependent	Totals
Sex - continued:					
(g) Soliciting					
Washington Missions	2	-	1	1	4
UN Missions	2	-	-	-	2
Shoplifting					
Washington Missions	4	19	9	8	40
UN Missions	4	6	-	-	10
Theft					
Washington Missions	-	6	2	1	9
UN Missions	3	4	-	-	7
Vandalism					
Washington Missions	-	-	-	1	1
UN Missions	-	-	-	-	-
Weapons: Possession					
Washington Missions	5	2	1	0	8
UN Missions	3	1	-	-	4
Weapons: Illegal Purchases & Export					
Washington Missions	-	-	-	-	-
UN Missions	1	-	-	-	1
TOTALS:	42	71	27	16	156

6. Q: What happens to foreign diplomatic personnel after they have been granted diplomatic immunity in the United States? Does the United States government ask that they leave? Are they voluntarily withdrawn? Please indicate in which of the cases (above) the diplomatic personnel remained in the United States.

A: There are several steps available in criminal cases where diplomatic immunity is a bar to prosecution.

The first step which the Department normally takes upon receipt of the police report is to request of the chief of mission a waiver of the offender's immunity. While waivers are not granted in every case, when they are, the case is prosecuted in the normal manner.

If waiver of immunity is refused, the Department normally requests the immediate removal of the offender or orders his/her expulsion. If the offender is entitled to immunity as a family member, the Department may, in addition to requesting the immediate removal of the offender, order the expulsion of the member of the mission from whom immunity is derived.

The Department also requires that the embassy deliver the individual's passport for cancellation of the American visa. The Department places the individual's name in its worldwide lookout system and informs the Immigration and Naturalization Service of the name and offense to ensure that such individuals do not return without review by appropriate United States authorities.

In other cases, the individual may be withdrawn by the sending government, either in anticipation of a request from the Department that he be removed from the country or because the sending government considers the offense sufficiently egregious to merit removal.

In the statistics submitted in answer to the previous question, unless otherwise indicated, personnel remained in the United States.

7. Q: Are diplomatic personnel permitted to remain in the United States even if they commit more than one offense? Are they permitted to seek diplomatic immunity on multiple occasions?

A: Persons entitled to immunity are generally not allowed to remain in the United States if they have committed a serious criminal offense or if they have committed more than one lesser criminal offense. In cases of driving offenses, action is taken in accordance with the Department's point system.

8. Q: Can foreign diplomatic personnel remain in the United States even if the crime committed was a serious or violent crime?

A: As noted previously, it is the policy of the Department to request a waiver of immunity in serious or violent criminal cases. Where a waiver is not granted, the Department's response is to expel the offender if the sending State has not already withdrawn him or her.

8(a)Q: If they are asked to leave, are they ever permitted to return?

A: They may not return without authorization from the Visa Office after consultation with representatives of the appropriate desk, the Office of Protocol and the Office of Foreign Missions. Such authorization has never been granted.

8(b)Q: If they leave voluntarily, are they ever permitted to return?

A: See 8(a).

8(c)Q: What procedure is followed to ensure that they are denied reentry into this country again?

A: The Office of Protocol requests the appropriate foreign mission to submit the alleged offender's passport(s) (and those of the family members in applicable cases) prior to departure from the United States. On receipt of the passport(s) the Office of Protocol will ask the Visa Office to cancel all of the alleged offender's United States visas and those of his/her family members, if appropriate, and to return the form I-94 to the United States Immigration Service.

Should the alleged offender or his/her family member(s) depart the United States before the visa(s) can be cancelled, the Department may not accept a replacement on the mission staff of the offender (or of his or her principal in the case of a crime committed by a dependent), until the visa(s) is/are cancelled.

After cancelling the visa(s), the Visa Office enters the name of the alleged offender(s) into the Department's worldwide Automatic Visa Lookout System (AVLOS) and gives the name(s) to the Central Office of the Immigration and Naturalization Service for entry into its lookout system. As a result of these actions, should the alleged offender apply for either a new visa or admission at a U.S. port of entry, no decision will be made on the application prior to consulation with the Department.

9. Q: Is it the State Department's position that diplomatic immunity would and should be granted regardless of the severity of the crimes committed by the diplomatic personnel?

A. The Vienna Convention on Diplomatic Relations does not limit criminal immunity based on the nature or gravity of a crime. Thus it is not within the discretion of the receiving State to grant or not to grant immunity in a given case; rather, it arises without qualification as a treaty obligation which the receiving State is committed to respect, knowing that in its capacity as a sending State it will receive the same benefit.

10. Q. Are Americans subject to prosecution for crimes committed against diplomats?

A. U.S. citizens generally are subject to prosecution for any act they commit which violates federal, state or local law, regardless against whom the crime is committed. In addition, federal law specifically provides for criminal penalties against persons who commit certain crimes against diplomatic agents, as defined by the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons Including Diplomatic Agents, done Dec. 14, 1973, 28 U.S.T. 1975, T.I.A.S. 8532, 1035 U.N.T.S. 167; implemented by the Act for the Prevention and Punishment of Crimes against Internationally Protected Persons, Pub. L. 94-467, 90 Stat. 1997; see 18 U.S.C. 112 (criminal offense to assault, intimidate or harass a foreign official, official guest or internationally protected person); 18 U.S.C. 878 (threats or extortion); 18 U.S.C. 970 (willful injury, damage or destruction of personal property), 18 U.S.C. 1116 (murder); and 18 U.S.C. 1201 (kidnapping). Eighteen U.S.C. 1116(b) defines "internationally protected person," which includes a "representative, officer, employee, or agent of the United States Government, a foreign government, or international organization who at the time and place concerned is entitled pursuant to international law to special protection against attack upon his person, freedom, or dignity, and any member of his family then forming part of his household." The Act also expressly provides that it is not intended to preempt any state or local law, 10 of Pub. L. 94-467. In addition, the United States has international treaty obligations to protect diplomatic agents and their families and consular officers.

11. Q. During the past year, you indicated that 31 criminal offenses were committed in the Washington, D.C. area by foreign residents who claimed diplomatic immunity. Of those 31 crimes, how many times did the United States request that the plea of diplomatic immunity be waived? If not all such cases, why not? In how many cases was it waived.

A. Eight of the 31 criminal offenses reported were committed during operation of motor vehicles. In six of the cases the operators' licenses were revoked and the ambassadors of the respective governments were requested to guarantee that the individuals would not operate a motor vehicle within the U.S. or any of its territories or possessions for the remainder of the individuals' assignments in the U.S.; in one case the operator's license has been suspended for six months, after which the case will be reviewed contingent upon the individual passing a remedial driving course in Virginia; in the remaining case the individual was recalled by his government shortly after the incident. While the embassies were not officially requested to waive diplomatic immunity in any of these eight cases, they were informed verbally that the option of waiving diplomatic immunity in order for the individual to have his day in court was available and that if this waiver was not granted, the action determined by the Department would stand with no recourse or appeal.

Of the remaining twenty-three cases in which criminal allegations were involved, the Department of State requested waivers of immunity in six cases. In two cases, waivers of immunity were granted; in another, a *de facto* waiver of immunity was granted. The three cases remaining, which occurred recently, are pending.

In four cases, in lieu of a request for a waiver of immunity, the Department took stronger action and expelled the individuals involved. In four other instances, the cases were resolved by terminations of individuals' assignments in the U.S.

In one case, involving a minor offense, the police officer released the individual immediately and no report was filed. Consequently, in the absence of formal charges, the Department was unable to request a waiver of immunity. In another case, in which the offense similarly was considered minor, the officer released the individual immediately, and the case effectively was closed before the Department was notified. Again, in the absence of formal charges, the Department was unable to request a waiver of immunity.

In the remaining seven incidents, the charges were relatively minor; four involved misdemeanor shoplifting, two involved disorderly conduct, and one involved resisting arrest. In all of these cases, the individuals involved were first-time offenders. These events occurred when the Department's former policy pertaining to petit offenses was in effect. Under this policy, if the individual involved was a first-time offender, the Department sent a formal communication to the appropriate Embassy which described the reported details of the occurrence and the allegations involved, and requested the Embassy's investigation of the incident and notification of the steps taken to ensure that there would not be a recurrence. The Department pursued the case until the Embassy communicated its formal response and a resolution was reached. However, the Department recently initiated a new policy whereby requests for waivers of immunity are requested in all criminal cases, including petit cases (e.g., misdemeanor shoplifting).

12. Q. Please provide a compilation of how many diplomatic personnel from each country, by country, have claimed diplomatic immunity, and on how many of those occasions each country has waived the right to invoke diplomatic immunity.

A. A listing of incidents reported to the Department involving persons entitled to full criminal immunity is given in response to Question 5 (Questions Submitted to Mrs. Selwa Roosevelt). Up to this time, the Department has not maintained separate statistics on the number of occasions immunity has been waived. However, it has been the practice to request waivers of immunity in cases involving allegations of serious criminal misconduct. If immunity is not waived in such cases, it is the practice of the Department to expel the offender.

13. Q. Please provide a compilation of how many times the U.S. has invoked diplomatic immunity in other countries, by country, and on how many occasions we have waived immunity?

A. See the attached chart for instances in which diplomatic immunity in other countries has been asserted. The Department of State is not aware of any instance in the past five years in which the U.S. Government has waived diplomatic immunity for persons charged with serious criminal offenses abroad.

Attachment: Statistics.

ASSERTION OF DIPLOMATIC IMMUNITY BY U.S. MISSIONS OVERSEAS*

(Period: August 2, 1982 - August 5, 1987)

POST	CRIMINAL		CIVIL	
Bamako	1	(1)		
Belize	1			
Budapest			1	(1)
Buenos Aires			1	(1)
Cairo	1	(1)		
Bogota	10	(10)	12	(12)
Dakar	1	(1)		
Grenada	1	(1)		
Helsinki			3	
Jakarta			1	(1)
Kathmandu	1	(1)		
Kinshasa			1	
La Paz	3			
Lima	4	(1)		
London	3	(2)	7	(5)
Manila	2		5	
Montevideo			1	(1)
Ottawa	1	(1)	1	
Panama			6	(1)
Paris			1	
Riyadh	1			
Rome	1	(1)	1	
San Jose			73	(66)
San Salvador	1	(1)		
Santiago	2	(1)	3	(1)
Santo Domingo	1			
Stockholm	1	(1)		
Tegucigalpa	3	(3)	2	
Tunis			3	(3)
Vienna	3			
TOTALS:	42	(26)	122	(92)

Note: Parenthetical figures indicate auto-related cases.

*In response to the Committee's request, the Department queried all posts concerning incidents in which diplomatic immunity has been asserted by the United States Government in the past five years (see response to question No. 1 submitted to Mrs. Selwa Roosevelt). The above figures are the best information that is available. However, because posts have not maintained comprehensive records in all cases, the information provided may not be complete. Moreover, the above figures would not necessarily reflect those cases in which it was not necessary for the USG to assert immunity due to the failure of the host state or its citizens to initiate legal proceedings against an individual known to be entitled to immunity.

14. Q. Please provide a list of the number of diplomats from each country who have diplomatic immunity in the United States and a corresponding list of the number of U.S. diplomats in each country who have diplomatic immunity abroad.

A. The attached list, "Diplomats in the United States," sets forth by country the number of diplomats in the United States at embassies, missions to the United Nations, and Missions to the Organization of American States.

A separate attachment "Geographical Index - U.S. Missions," sets forth by country (column "A") the number of American diplomats abroad. The numbers set forth in columns A-D of this attachment constitute those persons serving under the direct or indirect supervision of Chiefs of American Missions abroad and who are notified to host country foreign ministries as having full privileges and immunities.

Attachments: as stated.

DIPLOMATS IN THE UNITED STATES
SEPTEMBER 02, 1987

COUNTRY	EMBASSY	UNITED NATIONS	OAS
AFGHANISTAN	3	5	0
ALBANIA	0	6	0
ALGERIA	16	11	0
AM STATISTICAL INST.	0	0	0
ANDORRA	0	1	0
ANGOLA	0	6	0
ANTIGUA AND BARBUDA	3	2	1
ARAB LEQGUE	0	0	0
ARGENTINA	31	21	10
ASIA/AFRICAN LEGAL C	0	0	0
AUSTRALIA	50	9	0
AUSTRIA	10	10	0
BAHAMAS	6	3	1
BAHRAIN	5	4	0
BANGLADESH	12	10	0
BARBADOS	6	5	1
BELGIUM	21	10	0
BELIZE	3	2	0
BENIN	3	4	0
BHUTAN	0	5	0
BOLIVIA	16	6	14
BOTSWANA	4	6	0
BRAZIL	59	28	33
BRUNEI	5	6	0
BULGARIA	20	14	0
BURKINA-FASO	1	4	0
BURMA	6	7	0
BURUNDI	3	4	0
BYELORUSSIA	0	9	0
CAMEROON	17	11	0
CANADA	61	14	2
CAPE VERDE	4	5	0
CENTRAL AFRICAN REP.	3	5	0
CHAD	3	3	0
CHILE	31	14	11
CHINA	116	68	0
COLOMBIA	25	12	6
COMM. EURO. COMMUN.	20	0	0
COMOROS	1	1	0
~~COMOROS~~	~~0~~	~~0~~	~~0~~
CONGO	4	7	0
COOK ISLANDS	0	0	0
COSTA RICA	11	11	7
CUBA	0	40	0
CUBAN INTERESTS SEC.	17	0	0
CYPRUS	6	6	0
CZECHOSLOVAKIA	22	13	0
DEMOCRATIC YEMEN	0	5	0
DENMARK	16	8	0
DIEGO GARCIA	0	0	0
DJIBOUTI	3	4	0
DOMINICA	1	1	0
DOMINICAN REPUBLIC	7	10	5
ECUADOR	16	7	9

COUNTRY	EMBASSY	UNITED NATIONS	OAS
EGYPT	74	26	0
EL SALVADOR	12	4	3
EQUATORIAL GUINEA	1	2	0
ESTONIA	1	0	0
ETHIOPIA	7	6	0
EURO MIGRATION	0	0	0
EURO SPACE RES	0	0	0
EURO. ECONOMIC COMMU	0	0	0
FAO	0	0	0
FIJI	2	3	0
FINLAND	15	12	0
FOOD POL RES INST	0	0	0
FRANCE	76	24	1
FRENCH CARRIBEAN	0	0	0
GABON	8	5	0
GAMBIA	5	3	0
GERMAN DEMO. REP.	34	25	0
GERMAN FED. REP.	63	32	0
GHANA	12	12	0
GREECE	31	12	0
GRENADA	3	2	2
GRLAKES FISH COMM.	0	0	0
GUATEMALA	15	7	4
GUINEA	8	10	0
GUINEA-BISSAU	1	4	0
GUYANA	5	4	0
HAITI	17	5	1
HOLY SEE	6	0	1
HONDURAS	15	10	9
HONG KONG	0	0	0
HUNGARY	14	12	0
IADB	0	0	0
ICELAND	2	2	0
IFC	0	0	0
IMF	0	0	0
INDIA	46	17	0
INDONESIA	30	28	0
INST FOR AGRIC COOP	0	0	0
INTELSAT	0	0	0
INTER FERT DEVEL BAN	0	0	0
INTER. BOUNDRY AND W	0	0	0
INTER-AM DEFENSE	0	0	0
INTL COTN ADVIS BD	0	0	0
INTL DEVEL ASSOC	0	0	0
INTL INST COTTON	0	0	0
INTL JOINT COMM.	0	0	0
INTL LABOR OFF.	0	0	0
INTL PAC HALIBUT	0	0	0
INVEST DISPUTES	0	0	0
IRAN	0	0	0
IRAN	0	4	0
IRAQ	27	13	0
IRELAND	8	6	0
ISLAMIC CONFERANCE	0	0	0

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SEPTEMBER 02, 1987

COUNTRY	EMBASSY	UNITED NATIONS	OAS
ISRAEL	45	13	0
ITALY	32	13	1
IVORY COAST	11	9	0
JAMAICA	8	11	2
JAPAN	99	32	0
JORDAN	12	7	0
KAMPUCHEA	0	8	0
KENYA	15	11	0
KIRIBATI	1	0	0
KOREA (NORTH)	0	0	0
KOREA, REPUBLIC OF	64	0	1
KUWAIT	13	6	0
LAOS	3	5	0
LATIN AMERICAN ECON.	0	0	0
LATVIA	3	0	0
LEBANON	6	4	0
LESOTHO	6	7	0
LIBERIA	16	7	0
LIBYA	0	9	0
LIECHTENSTEIN	0	0	0
LITHUANIA	2	0	0
LUXEMBOURG	3	2	0
MADAGASCAR	12	8	0
MALAWI	6	4	0
MALAYSIA	29	7	0
MALDIVES	0	2	0
MALI	3	4	0
MALTA	2	5	0
MARSHALL ISLANDS	1	0	0
MAURITANIA	5	3	0
MAURITIUS	3	3	0
MEXICO	49	12	6
MICRONESIA	2	0	0
MONACO	0	0	0
MONGOLIA	0	6	0
MOROCCO	21	19	0
MOZAMBIQUE	4	9	0
NAMBIA	0	0	0
NAURU	1	0	0
NEPAL	5	5	0
NETHERLAND ANTILLES	0	0	0
NETHERLANDS	34	11	0
NEW ZEALAND	15	7	0
NICARAGUA	23	19	8
NIGER	4	2	0
NIGERIA	33	15	0
NORWAY	17	13	0
OAS	0	0	0
OECD	0	0	0
OMAN	6	4	0
ORG OF AFRICAN UNITY	0	0	0
PAHO	0	0	0
PAKISTAN	23	9	0
PALAU	0	0	0

DIPLOMATS IN THE UNITED STATES
SEPTEMBER 02, 1987

COUNTRY	EMBASSY	UNITED NATIONS	OAS
PANAMA	16	7	6
PAPUA NEW GUINEA	2	2	0
PARAGUAY	11	4	7
PERU	36	14	26
PHILIPPINES	42	22	0
PLO	0	0	0
POLAND	24	15	0
PORTUGAL	16	6	0
QATAR	9	5	0
ROMANIA	13	7	0
RWANDA	3	5	0
SAINT LUCIA	3	2	0
SAN MARINO	0	0	0
SAO TOME & PRINCIPE	1	3	0
SAUDI ARABIA	102	6	1
SEC VOLUNTEER SER.	0	0	0
SENEGAL	11	11	0
SEYCHELLES	1	1	0
SIERRA LEONE	5	5	0
SINGAPORE	12	3	0
SOLOMON ISLANDS	1	1	0
SOMALIA	19	4	0
SOUTH AFRICA	37	7	0
SOUTH PAC COMM	0	0	0
SPAIN	36	11	4
SRI LANKA	4	6	0
ST VINCENT/GRENADINE	0	0	0
ST. KITTS & NEVIS	3	5	0
STATELESS	0	0	0
SUDAN	15	11	0
SURINAME	3	2	0
SWAPO	0	0	0
SWAZILAND	7	5	0
SWEDEN	25	14	0
SWITZERLAND	22	0	0
SYRIA	7	7	0
TAIWAN	0	0	0
TANZANIA	8	9	0
TEMPORARY PLATE	0	0	0
THAILAND	40	17	0
TOGO	5	6	0
TONGA	0	0	0
TRADE REPRESENTATION	0	0	0
TRINIDAD AND TOBAGO	9	7	0
TROP TUNA COMM	0	0	0
TUNISIA	19	12	0
TURKEY	63	26	0
TUVALU	1	0	0
U.S.S.R.	100	87	0
UGANDA	5	7	0
UKRAINE	0	9	0
UNESCO	0	0	0
UNHCR	0	0	0
UNITED ARAB EMIRATES	6	5	0

OMA.DIPCNT.RP DIPLOMATS IN THE UNITED STATES PAGE: 5
SEPTEMBER 02, 1987

COUNTRY	EMBASSY	UNITED NATIONS	OAS
UNITED KINGDOM	89	23	0
UNITED NATIONS	0	55	0
UNITED STATES	0	0	0
URUGUAY	13	6	6
VANUATU	0	0	0
VENEZUELA	21	19	33
VIETNAM	0	14	0
WESTERN SAMOA	2	2	0
WHO	0	0	0
WORLD BANK	0	0	0
YEMEN ARAB REPUBLIC	18	7	0
YUGOSLAVIA	18	14	0
ZAIRE	10	7	0
ZAMBIA	3	8	0
ZIMBABWE	11	15	0
==> TOTALS..............:	2771	1590	222

In addition to Embassy, UN, and OAS Diplomats, there are 18 diplomats at the World Bank, 19 diplomats at the International Monetary Fund and 1 diplomat at the International Boundary and Water Commission.

GEOGRAPHICAL INDEX

U.S. MISSIONS

KEY: (A) Diplomats
(B) Diplomats Dependents
(C) A & T Staff
(D) A & T Staff Dependents

(E) Embassy
(CG) Consulate General

Country	A	B	C	D	TOTALS
Afghanistan (E)	13	0	6	0	19
Algeria (E)	35	40	0	0	75
Antigua & Barbuda	8	11	5	0	24
Argentina (E)	55	123	44	55	277
Australia (E)	65	134	48	56	303
Austria (E) (UNVIE)	64	180	132	96	472
Bahamas (E)	25	35	61	62	183
Bahrain (E)	12	26	25	26	89
Bangladesh (E)	29	40	31	45	145
Barbados (E)	43	65	33	21	162
Belgium (E) (USEC)(USNATO)	129	226	282	332	969
Belize (E)	21	15	6	5	47
Benin (E)	7	13	2	0	22
Bolivia (E)	53	83	39	54	229
Botswana (E)	10	15	23	13	61
Brazil (E)	61	119	59	98	337
Brunei (E)	3	6	2	1	12
Bulgaria (E)	18	35	18	13	84
Burkina-Faso (E)	12	15	19	18	64
Burma (E)	57	93	0	0	150
Burundi (E)	11	11	17	14	53
CAR (E)	20	20	0	0	40
Cameroon (E)	35	42	21	20	118
Canada (E)	101	203	49	57	410
Cape Verde (E)	7	7	2	0	16
Chad (E)	37	18	0	0	55
Chile (E)	41	63	32	52	188
China (E)	127	152	56	40	375
Colombia (E)	82	22	55	5	164
Comoros (E)	5	6	0	0	11
Congo (E)	9	10	9	2	30
Costa Rica (E)	45	44	102	80	271
Cote d'Ivoire(E)	36	36	107	110	289
Cuba (USINT)	15	21	8	0	44
Cyprus (E)	19	31	31	32	113
Czechoslovakia (E)	35	35	10	1	81
Denmark (E)	37	60	35	41	173
Djibouti (E)	13	5	7	10	35
Dominican Republic (E)	54	92	87	135	368
Ecuador (E)	43	90	55	101	289
Egypt (E)	115	168	44	34	361
El Salvador (E)	11	53	103	94	261
Equatorial Guinea (E)	5	4	0	0	9
Sub-Total:	1,623	2,467	1,665	1,723	7,478

KEY: (A) Diplomats
(B) Diplomats Dependents
(C) A & T Staff
(D) A & T Staff Dependents

Country	A	B	C	D	TOTALS
Ethiopia(E)	14	15	17	12	58
FRG (E)	99	101	154	108	462
Fiji (E)	16	12	11	3	42
Finland (E)	25	37	33	16	111
France (E) (UNESCO) (USOECD)	124	214	217	232	787
GDR (E)	30	39	10	8	87
Gabon (E)	8	9	9	5	31
Gambia, The (E)	13	23	*	*	36
Ghana (E)	17	16	31	14	78
Greece (E)	62	100	146	213	521
Grenada (E)	12	9	8	3	32
Guatemala (E)	54	95	38	41	228
Guinea (E)	8	7	18	11	44
Guinea-Bissau (E)	3	0	4	5	12
Guyana (E)	16	9	5	1	31
Haiti (E)	29	11	37	21	98
Honduras (E)	54	82	82	61	279
Hungary (E)	36	51	22	12	121
Iceland (E)	9	23	11	6	49
India (E)	110	200	91	124	525
Indonesia (E)	99	136	195	241	671
Iraq (E)	34	30	0	30	94
Ireland (E)	17	26	11	10	64
Israel (E) Tel Aviv	55	84	69	99	307
Israel CG) Jerusalem	12	23	14	11	60
Italy (E)(FODAG)	115	237	165	166	683
Jamaica (E)	55	22	19	4	100
Japan (E)	156	282	121	156	715
Jordan (E)	29	47	72	99	247
Kenya (E) (UNEP)	132	253	81	83	549
Korea (E)	87	143	55	70	355
Kuwait (E)	23	39	58	76	196
Laos (E)	4	0	5	0	9
Lebanon (E)	20	0	23	0	43
Lesotho (E)	8	18	15	15	56
Liberia (E)	111	169	95	88	463
Luxembourg (E)	13	27	16	10	66
Madagascar (E)	23	14	*	5	42
Malawi (E)	26	54	6	6	92
Malaysia (E)	41	91	34	38	204
Mali (E	17	11	31	44	103
Malta (E)	7	2	10	2	21
Mauritania (E)	18	16	18	11	63
Mauritius (E)	14	10	6	3	33
Mexico (E), D.F.	151	245	185	270	851
Morocco (E)	59	103	42	47	251
Sub-Total:	2,065	3,135	2,290	2,480	9,970

*Included in A or B, respectively.

KEY: (A) Diplomats
(B) Diplomats Dependents
(C) A & T Staff
(D) A & T Staff Dependents

Country	A	B	C	D	TOTALS
Mozambique (E)	9	3	3	0	15
Nepal (E)	19	35	37	51	142
Netherlands, The (E)	46	148	74	58	326
New Zealand (E)	22	41	17	14	94
Nicaragua (E)	52	21	8	0	81
Niger (E)	12	23	11	19	65
Nigeria (E)	54	55	39	22	170
Norway (E)	31	57	23	14	125
Oman (E)	55	72	7	8	142
Pakistan (E)	113	211	239	259	822
Panama (E)	105	110	105	83	403
Papua New Guinea (E)	7	5	2	1	15
Paraguay (E)	20	37	26	40	123
Peru (E)	65	85	105	151	406
Philippines (E)	125	206	237	381	949
Poland (E)	40	73	16	11	140
Portugal (E)	40	58	54	61	213
Qatar (E)	7	17	3	5	32
Romania (E)	55	47	8	0	110
Rwanda (E)	17	15	13	22	67
Saudi Arabia (E)	71	114	54	65	304
Senegal (E)**	39	59	39	59	196
Seychelles (E)	11	3	N/A	2	16
Sierra Leone (E)	23	27	*	*	50
Singapore (E)	24	58	40	34	156
Somalia (E)	33	21	50	150	254
South Africa (E)	62	83	65	48	258
Spain (E)	70	133	183	23	409
Sri Lanka (E)	20	21	44	58	143
Sudan (E)	35	24	105	60	224
Suriname (E)	12	18	10	10	50
Swaziland (E)	7	14	35	29	85
Sweden (E)	29	62	24	25	140
Switzerland (E)Bern -	34	41	21	13	109
Switzerland - Geneva (BO) & (US Mission to European Office of UN and Other Int'l Orgs.)	57	120	42	50	269
Syria (E)	35	43	0	0	78
Tanzania (E)	21	25	16	9	71
Thailand (E)	132	197	387	601	1,317
Togo (E)	10	21	4	3	38
Trinidad & Tobago (E)	21	37	17	3	78
Sub-Totals:	1,640	2,440	2,163	2,442	8,685

**Included in A or B, respectively.

**Senegal: It is coincidental that figures for Diplomats and A&T (plus figures in dependent columns) are same.

KEY: (A) Diplomats
(B) Diplomats Dependents
(C) A & T Staff
(D) A & T Staff Dependents

Country	A	B	C	D	TOTALS
Tunisia (E)	48	58	59	80	245
Turkey (E)	107	132	37	27	303
UAE (E)	21	36	52	50	159
UK (E)	104	185	186	118	593
USSR (Leningrad (CG)	22	16	0	0	38
USSR (Moscow)(E)	134	165	70	22	391
Uganda (E)	21	16	0	0	37
Uruguay (E)	28	41	22	29	120
Vatican City (E)					
Venezuela (E)	58	109	68	142	377
Yemen Arab Rep (E)	26	30	27	17	100
Yugoslavia (E)	42	65	36	28	171
Zaire (E)	47	61	73	122	303
Zambia (E)	20	20	15	4	59
Zimbabwe (E)	27	67	12	23	129
Sub-Totals:	705	1,001	657	662	3,025
GRAND TOTAL:	6,033	9,043	6,775	7,307	29,158

0160E:gg:as of 8/5/87

15. Q. You indicated that support personnel at foreign embassies are not immune to criminal prosecution. Please provide a list of occasions on which such personnel have been prosecuted. On how many occasions have such support personnel claimed their offense took place in the course of "official acts"?

A. We assume that the question refers to members of the service staff of a diplomatic mission, to use the Vienna Convention's term. As the persons involved would be entitled only to limited official acts immunity, which is a matter for judicial determination, the Department would not be likely to know of such cases unless they were brought to our attention by either the court or the media. We are aware of one such case involving a driver from the Embassy of Pakistan, which is discussed elsewhere in this submission.

16. Q. It is my understanding that the Secretary of State is responsible for deciding whether claims of diplomatic immunity will be invoked or waived in cases involving U.S. diplomats abroad. Is that the case?

A. Instructions for waivers of immunity by U.S. posts overseas are contained in 2 FAM 221.5 of the Foreign Affairs Manual, which provides that immunity shall not be waived except with the prior express consent of the Department of State. Requests from posts for waivers of immunity must be set forth in writing and sent to the Department to the attention of the Office of the Assistant Legal Adviser for Management, the executive director of the appropriate regional bureau and any other appropriate office. The Department's response to a request for waiver of immunity is reviewed by the Office of the Legal Adviser and the regional bureau, and may also be reviewed by the Director General of the Foreign Service and Director of Personnel. Requests for waivers involving consular functions are also reviewed by the Bureau of Consular Affairs, and may be authorized by the Assistant Secretary for Consular Affairs.

17. Q. Who is responsible for deciding whether diplomatic immunity will be invoked or waived in cases involving foreign diplomats in the United States--i.e., the foreign minister, ambassador, or the person involved in the crime.

A. Foreign government personnel serving in the United States as members of diplomatic missions, as consular officers and employees, and as members of U.N. missions are entitled under international law to certain degrees of immunity from the jurisdiction of courts in the United States depending on the status in which they are accredited by the United States. The decision to waive or assert that immunity in an individual case is solely within the descretion of the senidng State.

Specifically, Article 32 of the Convention provides that immunity may be waived by the sending State. Waivers must be express. Generally, a waiver of immunity is executed (or refused) by the ambassador or chief of mission following consultation with his government. Because immunity is not for the benefit of the individual, a diplomat may not waive it himself.

18. Q. In how many cases has compensation been provided to the victims of crimes committed by diplomatic personnel?

A. The records of the Department of State indicate that compensation has been provided in six cases, two of which were clearly criminal offenses and four of which were automobile-related and, absent immunity, might have been treated as criminal cases as well as torts.

19. Q. Is accreditation of a new ambassador affected by the sending country's policy with regard to past compensation to Americans injured by diplomatic personnel of the sending country's delegation?

A. Article 4 of the Vienna Convention on Diplomatic Relations provides that the sending State must make certain that agrement (i.e., acceptance) has been given by the receiving State for the person proposed to be its accredited head of mission to that State. The receiving State is not obliged to give reasons for a refusal of agrement, and, to avoid giving offense in such cases, often no reason is given. Refusal of agrement is seldom employed in United States practice.

The request for agrement is a procedure of long standing which enables the receiving State to determine in advance whether a proposed head of mission of the sending State will be acceptable, as well as to be better prepared for his or her eventual arrival. In this process the Department must always keep in mind that the establishment of diplomatic relations in the first instance was the result of a Presidential decision that it was in the national interest, and the maintenance of those relations, despite bilateral differences or even, at times, conditions approaching hostilities, is continued on that assumption.

Thus the focus in assessing the nomination of a new ambassador is on the overall record, and particularly on the character and professional qualifications of the person to be appointed, and the President's decision to accept or reject that nomination would not normally be influenced by a bilateral difference such as that posed by this question.

In principle there is no reason why the use of refusal to accept or delay in responding to the nomination of a new ambassador could not be considered as leverage on a matter deemed important enough to justify so extreme a step, but in our view this would be counterproductive.

20. Q. You indicated (pg. 5 of your testimony) that only two incidents would be covered by S. 1437. Which two? Why do you not believe that others would be covered? If you are correct that so few crimes would be covered, why would the legislation be so negative, from your view?

A. The two cases concerned members of the administrative and technical staff. One, which occurred within the twelve-month period, involved assault and driving while intoxicated, for which the Department swiftly expelled the offender. The other case, taken from the Ashman and Trescott book, concerned a domestic dispute in 1982 in which the wife of an embassy employee called for police assistance because she claimed that her husband had kicked her. We do not know whether or how the employee in this case would have been charged had he not had immunity.

Other cases would not be covered by S.1437 because (a) the offenses allegedly committed did not constitute crimes as defined in the legislation or (b) the bill does not contain language to include family members of either diplomatic agents or members of the administrative and technical staff.

Even if serious offenses as defined in S.1437 and allegedly committed by family members were to be included in the count, the number for the recent twelve-month period would not be appreciably increased. While the legislation if enacted would alter observance of the immunities provisions of the Vienna Convention on Diplomatic Relations by the United States in its capacity as a receiving State, it would undoubtedly have a seriously adverse reciprocal impact on American diplomatic mission personnel serving abroad. Moreover, the Department is dealing firmly with each serious criminal case as it arises and will continue to do so. For these reasons the legislation in our opinion would not have a sufficiently positive effect to warrant a departure from the present legal regime.

21. Q. You indicated (p. 13) that in certain cases involving crimes by juveniles, you have expelled whole families from the U.S. Please provide a list of these cases.

A. In 1984, the Department of State learned from local law enforcement authorities of the alleged misconduct of two sons of a Liberian diplomat. In the months prior, the individuals reportedly had been involved in incidents in the Reston, Virginia, area, where the family resided. The alleged actions of the older of the sons had involved burglary, larceny, and possession of marijuana, while those of the younger had included disorderly conduct and resisting arrest. In November 1984, at the request of the Department, the individuals were withdrawn from the United States and repatriated to Liberia. Their names were submitted for inclusion in the Automated Visa Lookout System to bar their reentry into the United States.

In December 1986, the Department was notified of an automobile accident in the Reston area in which reckless driving was involved. It was discovered that the driver charged with the accident was the older of the two expelled sons. Further investigation revealed that both sons had returned to the United States. Upon their discovery in this country, they both were immediately expelled once again. For the reasons that the sons had returned with the full knowledge of the diplomat and his family, and that the Department believed that the continued presence in this country of the other family members would serve only to encourage the sons' return in the future, the Department requested the withdrawal of the entire family. As a result, the remaining family members departed the United States the following month.

In January 1983, the son of a Saudi Arabian diplomat allegedly raped a high school classmate. Although the family of the victim would not press charges, the individual was expelled from the U. S. and steps were taken to bar his reentry into the country. Subsequently, there were sporadic reports of the individual being seen again in the area, and at the Department's request the Saudi Embassy investigated these claims. The Embassy concluded that for the most part, the alleged sightings must have been a case of mistaken identity, in that the individual's brothers were almost identical in appearance to him, and his presence in Saudi Arabia was confirmed. However, in one or two instances, it was discovered that he apparently had returned to the U. S. and had visited his family briefly. As a result, the Department requested that the Embassy ensure that he never return to the U. S.

In June 1987, the Department was notified of the son's alleged reappearance. In response to the Department's inquiry, the Embassy ensured that he was not in the U. S. But as the Department believed that the continued presence in this country of the other family members would serve only to encourage the son's return in the future, the Department requested the withdrawal of the entire family, and they departed the United States shortly thereafter.

22. Q. What is the Department's view on S. 339, Senator Specter's legislation making the use of firearms to commit a felony by foreign diplomats in the United States a Federal felony?

A. Senate Bill 339, "to protect the internal security of the United States against international terrorism by making the use of a firearm to commit a felony by foreign diplomats in the United States a Federal felony," would expressly identify certain foreign diplomatic and consular personnel as committing criminal acts if they use a firearm to commit a felony under United States law. However, the bill does not claim to reduce the immunity of the persons so identified and, in fact, identifies such persons by means of express reference to their immunity.

Thus it appears that the desired effect of this legislation would be achieved only by the amendment of the Vienna Convention on Diplomatic Relations. The most basic problem with this amendment would be the alteration of the entire concept of diplomatic immunity. At present, certain limited classes of persons have complete immunity from criminal jurisdiction of the receiving State and are free from the threat of being arrested or detained and having to defend themselves against ill-founded actions or harassment based on political motivation. Any attempt to carve out of this immunity a particular type of activity may neutralize this important protection. The U.S. cannot risk placing anyone who handles national security information in the hands of foreign governments, nor can the U.S. submit its personnel to pressure by subjecting their dependents to the jurisdiction of hostile governments. Any amendment of the Convention concerning immunity may also give rise to consequential amendments to related provisions of the Vienna Convention (e.g., personal inviolability, residential inviolability, and premises inviolability).

We believe it would be useful in this connection to consider the UK's views on the desirability and practicability of seeking to amend the Convention in order that the government might deal more effectively with abuses of immunity. For that reason we attach a copy of Section 9-11 of the British Government's report of April 1985 to Parliament on its review of the Vienna Convention on Diplomatic Relations and reply to the report by the Foreign Affairs Committee of the House of Commons on "The Abuse of Diplomatic Immunities and Privileges."

Attachment: Section 9-11 of the British Government's Report of April 1985 to Parliament on its Review of the Vienna Convention on Diplomatic Relations.

ATTACHMENT

Amendment of the Vienna Convention

9. The Government have studied the views of the Committee on the desirability and practicability of seeking to amend the Vienna Convention in specific cases of abuse (paras 53–57). This would alter the balance between immunities and obligations. Existing obligations include the duty of all persons enjoying privileges and immunities to "respect the laws and regulations" of the receiving state (Article 41.1). Any change that strengthened this provision and enabled receiving states to enforce their own laws in respect of foreign diplomats could be valuable in dealing both with state-sponsored terrorism and more petty abuses. It could also however mean a corresponding reduction in the protection given to the personnel and facilities of sending states. This could bear hardly on states that generally abide by the existing rules and lead in some cases to unjustified harassment. It could also restrict the ability of Governments, acting on behalf of their country and its citizens, to carry out legitimate business overseas.

10. Moreover the Vienna Convention is a codification of international law and practice going back many hundred years which was re-examined carefully by the international community before it was agreed in 1961. As such it is almost universally respected. 145 states have become parties. The 1964 Diplomatic Privileges Act gave effect to it in the UK. Those very few states which are not parties give general effect to its terms. In practice it has become the modern customary law so that termination of our acceptance of the Convention (even if legally possible) would leave us in substantially the same position. It has provided a framework which is explicit and clear in many respects but nevertheless leaves room for common sense in its detailed interpretation and application.

11. We have made extensive international soundings on the feasibility of amending the Vienna Convention through renegotiation. There is a widespread consensus that attempts to do so would not succeed. They could in fact create more problems than they would solve by opening up issues on which disagreements could surface and thrive. Given the ambiguities and grey areas, the process would be complex and time consuming and would lead to a very confused position until the great majority of states accepted any amendments by ratification. We have therefore agreed with the Committee's conclusion that:

> "Given the difficulties in the way of achieving any restrictive amendment to the Convention, and the doubtful net benefit to the UK of so doing, it would be wrong to regard amendment of the Vienna Convention as the solution to the problem of abuse of diplomatic immunities. Accordingly, the Government are right not to concentrate on amendment of the Convention as a major element in new policies to restrict abuse of immunities".

23. Q. The Department's publication "Guidance for Law Enforcement Officers: Personal Rights and Immunities of Foreign Diplomatic and Consular Personnel" indicates (p. 1) that "118,000 persons are entitled to some degree of special privilege under international law". Please elaborate and explain what degrees of "special privilege"are meant, and specifically whether various degrees of diplomatic immunity are intended?

A. The "special privileges" referred to in the Department's publication "Guidance for Law Enforcement Officers" are the privileges and immunities which the United States accords to certain employees and officials of foreign governments pursuant to its international legal obligations. Individuals are entitled to varying degrees of privileges and immunities depending on the status in which they are accredited or accepted by the United States.

The quoted passage is taken from a paragraph of the introduction to the Department's publication that was consciously written in broad, nontechnical language out of an awareness that many law enforcement officers have had an inadequate or distorted conception of the term, "diplomatic immunity." The first two sentences of the paragraph in question make the point that this term is popularly but erroneously understood to refer to the "special protections" afforded all employees of foreign governments who are here as official representatives of their governments. The paragraph as a whole seeks to alert the readership to this misconception.

The word "privilege" was employed in the paragraph under discussion as an umbrella term covering both immunity and inviolability. What follows in the publication is a comprehensive review of all the categories of persons entitled to privileges and immunities (privileges here used in the sense of embracing exemptions from certain taxes, public service, and custom duties and taxes) and the varying degrees of immunity, diplomatic and other, to which individuals are entitled, depending upon the category into which they fall. The table in the back of the publication gives a useful summary of these varying degrees of immunity in their law enforcement aspects.

24.Q. You provided the committee with a table showing various degrees of immunity provided to diplomatic and consular staff as an appendix to your testimony. Please provide the number of individuals who fit in each category.

A. Please see attachment.

CRIMINAL IMMUNITY

DIPLOMATIC				CONSULAR	
DIPLOMATS*	ADMINISTRATIVE AND TECHNICAL STAFF	SERVICE STAFF	PERSONAL SERVANTS	CONSULAR OFFICERS	CONSULAR EMPLOYEES
(Ambassador, Ministers, Counsellors, 1st, 2nd & 3rd Secretaries, Attaches)	(Clerks, Typists, Procurement Officers)	(Drivers, Gardeners, Cooks, Security Guards)	(Maids, Butlers)	(Consuls General, Consuls, Vice Consuls)	(Clerks, Typists)
FULL CRIMINAL IMMUNITY	FULL CRIMINAL IMMUNITY	CRIMINAL IMMUNITY FOR OFFICIAL ACTS ONLY	NO IMMUNITY	CRIMINAL IMMUNITY FOR OFFICIAL ACTS ONLY	CRIMINAL IMMUNITY FOR OFFICIAL ACTS ONLY
(4,659)	(3,767)	(1,020)	n/a	(2,934)	(4,691)
Family Members	Family Members	Family Members	Family Members	Family Members	Family Members
FULL CRIMINAL IMMUNITY	FULL CRIMINAL IMMUNITY	NO IMMUNITY	NO IMMUNITY	NO IMMUNITY	NO IMMUNITY
(10,504)	(5,609)	n/a	n/a	n/a	n/a

*This category includes diplomats at the O.A.S. and members of missions to the United Nations and a small number of persons at the World Bank and IMF.

By special agreement, on a reciprocal basis, all personnel at the Embassies of the People's Republic of China and the Union of Soviet Socialist Republics and members of their families enjoy full criminal immunity.

(PRC: 66)
(USSR: 325)

By special agreement, on a reciprocal basis, consular employees and members of their families of the following countries enjoy full criminal immunity:

	*(P)	*(D)
Hungary A&T Staff	7	7
Peoples Republic of China	116	1
Poland**	24	NA
Philippines**	493	NA
USSR	14	18
TOTAL:	654	26

*(P)= Principal (D)=Dependent

**Principals receive criminal immunity for official acts only. Dependents receive no immunity.

Statistics are as of August 12, 1987

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25. Q. Does the Department consider that representatives of the Palestine Liberation Organization are entitled to diplomatic immunity?

A. Representatives of the Palestine Liberation Organization Observer Mission to the UN, like other observer missions to the UN such as the SWAPO and OAS Observer Missions, are not entitled to the privileges and immunities enjoyed by member representatives of U.N. missions. Instead, they are entitled only to the very narrow range of privileges and immunities that are accorded to invitees of the UN.

26. Q. Would the Department support a requirement to require liability insurance for each foreign mission located in the U.S. in order to provide adequate compensation for injuries suffered by Americans as a result of crimes committed by diplomatic personnel?

A. The Department does require liability insurance for motor vehicles which provides adequate compensation for injuries suffered by Americans as a result of motor vehicle "accidents" caused by diplomatic personnel. The Department is unaware of insurance coverage available to cover general "crimes".

A detailed discussion of the Department's view of a no-fault national fund to compensate victims of diplomatic crimes is set forth in answers to the Committee's questions of July 31, 1987.

27. Q. Would the Department support a requirement that diplomatic personnel who commit serious crimes (or repeat offenders of lesser crimes) either be subject to prosecution or expelled?

A. In cases involving the alleged commission of serious crimes by diplomatic personnel, Department policy is to seek a waiver of immunity or to seek the offender's removal from the United States. Whether a waiver is preferable to expulsion depends on such factors as the cooperation of the victim, the law enforcement authorities' evaluation of the prospects for a successful prosecution of the case, and the Department's assessment of the effect of the possible outcome on bilateral relations.

If the sending State chooses to waive diplomatic immunity, the individual charged would be subject to prosecution. If the Department determines that a waiver request would not be in United States' interests, or if the sending State refuses to waive immunity, the U.S. Government would expel the alleged offender.

28. Q. Would the Department support a requirement to increase the minimum liability insurance for motor vehicle, vessel, or aircraft from the present level of $300,000?

A. The Department in January 1985 imposed a requirement for $300,000 per incident. We did so after convening a board with outside insurance expert consultants. The $300,000 level is substantially greater than the requirements of any of the states. Costs for those diplomats who either have no prior driving record or are otherwise deemed by the insurance industry to pose a higher risk may now reach $1,500 to $2,000 per year, exclusive of coverage of their own vehicle. The increase to $1 million coverage would increase the cost for those deemed the lower risk by $225. It would raise the cost for those at the higher spectrum of the risk scale by $340. In addition, such coverage for those diplomats now participating in state assigned risk pool insurance coverage might, in many instances and in several states, be impossible to acquire because of state insurance laws. The net result of such a requirement would be to deny to a number of third world diplomats, and perhaps even to some of the third world embassies, the privilege of operating motor vehicles in the U.S. If this were the result, reciprocal actions against U.S. missions and our personnel could pose very serious problems.

The Department in arriving at the $300,000 level in 1984 recognized that periodic review of the level was essential and it is our present plan to review the level each five years. The next review would be conducted in 1989, and if new minimums should be recommended by the board of examiners, they would be imposed in January of 1990.

The Congress might wish to consider, as an alternative, the creation of a fund for compensation in those rare cases where actual damages exceed $300,000. Such a fund could either be established by appropriation or could be a mix of funds derived from appropriation and a nominal surcharge on diplomatic insurance (a $20 annual fee would generate approximately $300,000 per year). Should the surcharge over time provide a sufficient reserve, no appropriated funds would be required. Should such an alternative approach be of interest, the Department would be pleased to work with Congressional staff in developing enabling legislation.

Great Britain's Example and the Vienna Convention

1. Q. Are you familiar with the review of diplomatic immunity being undertaken in Great Britain? I am told that diplomats charged with serious crimes are ordered out of the country and that repeat offenders of other crimes are also ordered out. Is this a reasonable position to take -- short of prosecution under criminal statutes?

A. Where prosecution is impossible due to the inability to obtain a waiver of immunity, the Department's policy is to expel diplomatic personnel alleged to have committed a serious crime or to have committed repeated minor offenses. The Department explained this policy to the Chiefs of Mission in the attached circular notes of March 21, 1984, and September 21, 1987.

Attachments: Circular Diplomatic Notes 3/21/84 and 9/21/87.

ATTACHMENT

DEPARTMENT OF STATE
CIRCULAR DIPLOMATIC NOTE

PRIVILEGES AND IMMUNITIES
9/21/87

The Chief of Protocol presents her compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and takes this occasion to call to their attention the serious concern of the United States Government in regard to allegations of criminal activity on the part of certain members of the missions or members of their families. As evidenced by recent legislation introduced in both the United States Senate and the House of Representatives, the Congress also shares this concern.

The Department of State wishes to reiterate to the missions that criminal violations will not be tolerated by the United States Government or the community at large. In this regard, the Department of State refers to its circular note of March 21, 1984. While the Department will continue to take necessary action as required by international law to preserve the immunity of persons involved in allegedly criminal behavior, the Department wishes to summarize here the corrective measures consistent with international law that are taken in cases involving serious criminal conduct, in particular crimes of violence, recurrent offenses of a less serious nature, or other egregious abuses of immunity.

As a matter of policy, the Department requests a waiver of immunity by the sending state so that all allegations may be adjudicated fully. In the absence of a waiver of immunity the United States Government normally requires that the alleged offender depart the country. In certain cases, however, the Department retains discretion to require the departure of the alleged offender even though a waiver of immunity may have been

The missions are advised further that when such cases involve dependents, the Department may require the removal of the principal from whom privileges and immunities are derived and the members of his or her family when the sending government declines to waive immunity or the Department determines that such action otherwise is necessary or appropriate.

In all cases involving injury to persons or damage to property, the Department pursues vigorously the interests of the aggrieved parties in obtaining prompt restitution by individual offenders or by their governments.

Moreover, in order to ensure a complete record in each case, or to lay the basis for possible prosecution in appropriate cases, the Department has notified law enforcement officials throughout the United States to prepare cases carefully and completely and properly document each incident at the time of an alleged crime so that charges against offenders may be pursued as far as possible in the U.S. judicial system.

The Department wishes to remind the missions that in any case involving criminal activity no ban exists on the arrest and prosecution of a person formerly entitled to privileges and immunities who returns to the United States, unless it can be proved that the crime related to the exercise of official functions. The Department recognizes that the threat of prosecution may serve, as a practical matter, to prevent individuals who commit crimes while in privileged status from returning to the United States. To ensure that such individuals do not return without appropriate review by United States authorities, henceforth the Department will require that the sending government forward the passport of the alleged offender (and of family members in appropriate cases) to the Department before he or she departs the United States so that the visa may be revoked and the form I-94 returned to the Immigration and Naturalization Service. Should the alleged offender leave the United States before the visa is cancelled, the Department may not accept a replacement on the mission staff of the offender (or of his or her principal in the case of a crime committed by a dependent), until the visa is revoked.

Department of State,
Washington, September 21, 1987.

ATTACHMENT

DEPARTMENT OF STATE
CIRCULAR DIPLOMATIC NOTE

PRIVILEGES AND IMMUNITY: 3/21/84

The Secretary of State presents his compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and takes this occasion to bring to their attention a matter of serious concern to the Department relating to diplomatic immunity.

From its inception, the Government of the United States has recognized the importance of the principle of diplomatic immunity in the conduct of affairs among nations. For nearly two hundred years, the sanctity of the diplomatic mission and the inviolability of its members, cardinal principles embodied both in domestic statutes and in international law, have been observed by the United States. The Department wishes to assure the missions that the United States, in keeping with its obligations under international law, will continue to adhere to this policy.

The Department is concerned, however, with allegations of criminal activity on the part of a few members of the missions or family members. Although the incidence of such behavior is very small in comparison to the large number of individuals residing in the Washington, D.C. area who enjoy immunity and whose personal conduct is exemplary, the Department is disturbed by the apparent increase of violations of the law involving privileged personnel which have occurred within the last two years.

The Department wishes to advise the missions that, as a matter of policy, in the isolated cases which have arisen - the majority of which involved dependents of mission personnel - the Department has been quick to take appropriate steps to ensure the entitlement to diplomatic immunity of the individuals involved. In the absence of a waiver of immunity by the sending government, in most instances the Department has required that the alleged offender depart the United States immediately. Such action in effect has amounted to the expulsion of that individual from the United States. In addition, one year ago, the Department took the further step of alerting the appropriate authorities of the United States Government of the expulsion of these individuals to provide for the eventuality that such individuals would attempt to reenter the United States.

The missions are advised that, in the case of the commission of a crime attributed to a family member expelled from the United States, the privileges and immunities accorded to that family member under Article 37(1) of the Vienna Convention on Diplomatic Relations would terminate upon expulsion. This would apply even though the principal alien from whom privileges and immunities were derived remained in a privileged status in this country.

In this respect, the situation is analogous to that of a member of a mission whose functions, and thus immunities, are terminated pursuant to Article 43 of the Vienna Convention.

In either case, on the termination of criminal immunity, the bar to prosecution in the United States would be removed and any serious crime would remain as a matter of record. If a person formerly entitled to privileges and immunities returned to this country and continued to be suspected of a crime, no bar would exist to arresting and prosecuting him or her in the normal manner for a serious crime allegedly committed during the period in which he or she enjoyed immunity. This would be the case unless the crime related to the exercise of official functions, or the statute of limitations for that crime had not imposed a permanent bar to prosecution.

Thus, unless the individual concerned desired to face trial for the alleged offense, a crime committed by a person with immunity from criminal jurisdiction would, as a practical matter, carry a penalty of at least a number of years exclusion from entry to the United States. The Department is compelled to add that, in such cases, the full resources of the Department of State would be applied to the detection of the return of such persons and to alerting local law enforcement authorities to their legal rights in the circumstances.

The Department of State regrets exceedingly that unfortunate circumstances have made it necessary to bring to the attention of the Chiefs of Mission the Department's understanding of the law in this regard.

Department of State,
Washington, March 21, 1984

Great Britain's Example and the Vienna Convention

2. Q. One witness quoted the British government as stating that the new policy includes "strict application of the existing provisions of the Vienna Convention and introducing restrictive but legally justifiable interpretations of specific provisions of the Vienna convention where required". In the opinion of the legal advisers of the State Department, is the British position consistent with the Vienna Convention?

A. The British Government conducted a full review of the Vienna Convention on Diplomatic Relations in 1984 and 1985 with the objective of restricting abuse of diplomatic immunity and dealing with it severely when it occurs. The Government rejected as infeasible any attempt to seek amendment of the Convention as a major element in new policies to restrict such abuse. Instead, it decided to concentrate on examining areas of action available within the present framework, including strict application of the existing provisions of the Vienna Convention and introducing restrictive but legally justifiable interpretations of specific provisions of the Vienna Convention where required.

In pursuing this firmer policy, the British laid down certain important principles that would need to be respected, foremost among them being adherence to agreed international rules to which the Government had subscribed; consequently any administrative action to apply the Vienna Convention restrictively must have a sound legal basis. Another key principle was that their ability to protect British interests overseas could be affected by any limitations they imposed as a receiving State - a recognition that the concept of reciprocity is crucial.

In the Department's opinion the new, firmer policy towards application of the Vienna Convention which the British developed after conducting a thorough review of all the legal and practical possibilities for action is consistent with the Convention.

Great Britain's Example and the Vienna Convention

3. Q. Isn't the definition of a "diplomat" entitled to diplomatic immunity subject to interpretation by each country? Why has the State Department decided to permit such a broad interpretation?

A. Article 1(e) of the Vienna Convention defines a diplomatic agent as "the head of the mission or a member of the diplomatic staff of the mission." Members of the diplomatic staff are defined in Article 1(d) as "members of the staff of the mission having diplomatic rank." The Vienna Convention, therefore, does not give a receiving State discretion to exclude from the definition of the term "diplomatic agent" the head of the mission or members notified to it as having diplomatic rank, for example, by declaring that certain of those individuals would be accepted as members of the administrative and technical staff. Accreditation of individual diplomats is, however, solely within the discretion of the receiving State. In order for a person to be recognized and to retain his status as a diplomatic agent in the United States, the Department of State requires that such person: (1) possess a valid diplomatic passport issued by his government or present a diplomatic note from the mission formally representing the intention of the sending government to assign to him diplomatic duties; (2) possess a recognized diplomatic title; (3) be a holder of an A-1 nonimmigrant visa; (4) be over 21 years of age; (5) with the exception of certain designated or agreed upon positions, reside in the Washington D.C. area; and (6) devote official activities to diplomatic functions on an essentially full-time basis. The Department does not consider that these requirements connote too broad an interpretation of diplomatic status, but does consider that its practice in this area is consonant with its interests as a sending State.

Great Britain's Example and the Vienna Convention

4. Q. Could this approach be applied here in the United States? Doesn't the State Department have the authority to do that now, just as the British did? If so, why have you not exercised it?

A. The Department does not lack authority to apply a stricter application of the Vienna Convention on Diplomatic Relations than it has employed in the past, and we exercise that authority when we determine that such action is in the national interest. In fact, the Department had instituted a number of these stringent measures before the British Government released the report on its review of the Convention in April 1985. Indeed, it was their "careful comparisons with laws and practice of other countries and in particular the United States Foreign Missions Act 1982" on which the British based their conclusion that several proposals in the diplomatic premises category were fully consistent with their obligations under the Vienna Convention.

Examples of the measures referred to are the following:

- Institution of stringent monitoring of traffic citations, with cumulative penalty points leading to suspension or withdrawal of driving privileges (cf. copy of diplomatic note accompanying response to Question No. 6 of the series based on United Kingdom review of the VCDR).

- Issuance of Federal diplomatic license plates for vehicles owned by foreign missions and their authorized representatives as part of a program to promote stricter law enforcement.

- A tighter monitored and enforced mandatory automobile liability insurance program.

- A varied program of travel controls on the embassies, consulates, and UN missions and Secretariat personnel of certain countries, imposed in the interests of reciprocity and national security.

- During 1986 foreign missions filed 307 requests with the Department for approval of the acquisition, disposition, or alteration of real property in the United States. Twenty-two of these requests were denied on the basis of reciprocity, national security, or potential violations of local zoning and land use laws or regulations.

The Department has for years imposed ceilings on the size of the diplomatic missions of certain countries on the basis of reciprocity, but like the UK we have concluded that a general policy of restrictions is not in our national interest. Again like the British, we believe that, in limiting the size of individual missions, "a case-by-case approach remains the most appropriate means of dealing with existing problems of abuse or potential abuse."

In addition the Department has communicated to all Chiefs of Mission by circular note of September 21, 1987, the serious concern of the United States Government over instances or allegations of criminal misconduct on the part of some members of missions or members of their families. In that note the Department has reiterated its policy on requesting waiver of immunity and withdrawal of the offender from the United States; possible removal of the head of household where the offender is a family member; vigorous pursuit of efforts to obtain prompt restitution by offenders or the sending State in behalf of victims of personal injury or property damage; and revocation of offenders' visas to prevent their return to this country. The note summarizes the firmer approach to the problem which the U.S. Government takes, one which recognizes our host country obligations under international law. A copy of this communication is attached.

New laminated photo identification cards carrying appropriate language on immunity for the several categories of embassy personnel, as well as for UN mission and Secretariat officials who have diplomatic immunity, are now in use. In addition, they carry telephone numbers to provide guidance to police officers 24 hours a day. Charts displaying specimen cards and added useful information have been provided to law enforcement authorities.

Department specialists recently completed a briefing in Washington for representatives of area law enforcement agencies advising them of the Department's policy regarding cases involving persons entitled to immunity and measures which may be taken in cases involving such persons.

Notification forms for accreditation of diplomats and acceptance of subordinate mission staff are being revised to require information which will facilitate a more thorough review and a more reliable judgment of the actual status of the person being notified and, whenever applicable, the spouse, children, and other household members. Additional information on a person's background, his position and place of employment, and the name of the person he is replacing will be required by the new forms.

To conclude, the Department's assessment of the desirability of restrictively applying a specific provision of the Vienna Convention is largely based on the standard of treatment the Department seeks to obtain for its diplomats abroad, but it may be based on our host government concerns about criminal misconduct by mission personnel if the need arises. One further area in which the Department has determined that it is in the interest of the United States to apply a provision of the Vienna Convention restrictively is with respect to the definition of the members of the family of a diplomat forming a part of the household. The Department has adopted a definition of "family" which normally includes only the spouse of a diplomat and his or her unmarried children under 21 years of age who reside exclusively in the diplomat's household, or children under 23 years of age who are attending an institution of higher learning on a full-time basis.

In addition, because the Convention does not obligate us to extend full immunity to aliens "permanently resident in the United States," we propose to terminate privileges and immunities to locally hired members of embassy staffs who have resided in the United States for ten years or more.

Great Britain's Example and the Vienna Convention

5. Q. Isn't the authority to declare a diplomat "non grata" and to expel that diplomat -- including the head of a mission or any other member of the staff of the mission -- explicit under Article 9 of the Vienna Convention?

A. Yes. Article 9 of the Vienna Convention on Diplomatic Relations expressly provides that "The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable."

Great Britain's Example and the Vienna Convention

6. Q. Does not Article 40 of the Vienna Convention govern the actions of foreign diplomats and, in fact, specifically instruct them to obey the laws of the receiving state? If treaties are upheld only if all parties agree to and abide by the provisions contained in the treaty, why is the U.S. abiding by certain articles of the treaty while other nations are ignoring Article 40 of the Vienna Convention?

A. Article 41 sets out four general obligations that diplomatic agents and other persons enjoying privileges and immunities have towards the receiving State, each of which reflects customary international law.

The duty to respect the laws and regulations of the receiving State is the most important of these four general obligations. The very formulation of the statement of this duty makes it clear that the privileged status conferred on a member of the mission in no way exempts him from conforming in his private acts to the laws of the host State. Nevertheless it is worth noting that the opening phrase of Article 41, which couches the duty of mission members to obey the laws and regulations of the receiving State as "without prejudice to their privileges and immunities," precludes any diminution or denial of privileges and immunities as a sanction for failure to fulfill the duty under discussion. Accordingly, the failure of such persons to respect the law does not give rise to a breach of the Convention that would justify a refusal of the receiving State to honor its commitments under the Convention.

It is our experience that most persons who have diplomatic immunity in the United States do respect those of our laws and regulations of which they are aware. Should an infraction occur which is incompatible with a continuance of diplomatic status, Article 9 of the Convention provides a specific remedy by giving the receiving State authority to expel the offender from its territory. Alternatively, the receiving State may elect to seek a waiver of immunity.

At the same time it should not be supposed that the subject section of Article 41 is of little value to the Department. For example, the police report of even a minor infraction serves as the basis for bringing to the attention of the cognizant head of mission for possible disciplinary action a staff member's failure to fulfill his duty under the Convention. It also may lay the foundation for ordering the offender's withdrawal.

The Department has also cited the provision in question to good effect on more than one occasion in its communications to all Chiefs of Mission. To illustrate, we are furnishing a copy of the circular diplomatic note which the Secretary of State sent to Chiefs of Mission on September 9, 1985, announcing a stringent new program establishing the point system for keeping track of members' cumalative traffic citations for assessment of penalties on a graduated scale.

Attachment: Department of State Diplomatic Note dated September 9, 1985.

DEPARTMENT OF STATE
CIRCULAR DIPLOMATIC NOTE

ATTACHMENT

9/9/85 - Driving Practices

The Secretary of State presents his compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to call to their attention the Department's notes of July 2, 1984, and July 3, 1985, regarding driving practices and to advise the missions of the following. The number of traffic citations being received by members of missions and their families is a matter of grave concern to the Department. Such driving practices may endanger public safety and indicate that many in the diplomatic community are not fulfilling their obligations under Article 41 of the Vienna Convention on Diplomatic Relations to respect the laws and regulations of the receiving State. In addition such behavior tends to alienate the general public who observe such practices from the diplomatic community and thereby damages the reputation of the diplomatic community as a whole.

Recognizing that the majority of the members of the diplomatic community operate motor vehicles in compliance with local traffic laws and regulations, the Department has instituted a program to monitor violations and identify operators who repeatedly receive citations. This program will bring violations to the attention of Chiefs of Mission by diplomatic note. The Department will assess points for all traffic violations using the American Association of Motor Vehicle Administrator's standardized point system. If, at any time, during a two-year period, a mission member or a member of his or her family accrues eight or more points, the Department will review whether driving privileges should continue to be extended to that individual or whether such privileges should be suspended for an appropriate period.

Under this program, the more serious the infraction, the higher the point value assessed. Certain infractions, such as driving under the influence of alcohol or reckless driving resulting in personal injury, will cause immediate review as they will be assessed as eight-point violations. Each speeding violation will be assessed as either two or four points, depending on the rate of speed in excess of posted limits. Parking violations will be assigned one point.

The Department urges the Chiefs of Mission to discuss notices of traffic citations with their personnel, and to bring to the attention of all members of the mission the Department's concerns for public safety and the new procedures that are now in effect.

The Chiefs of Mission are reminded that traffic citations must be resolved by missions with local authorities and that while the Department will continue certifying to local courts the immunity of an individual if requested to do so, the Department will not intervene with local jurisdictions to cancel valid traffic citations.

The Department is certain that the Chiefs of Mission share the Department's concern for public safety and the desire to identify those individuals who, through their disregard of local laws and regulations, bring criticism upon the whole diplomatic community.

Department of State,
Washington, September 9, 1985

JEN

Great Britain's Example and the Vienna Convention

7. Q. The Vienna Convention in Article 29, section 4 states: "The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State." Has the U.S. ever requested a sending State to prosecute its own diplomats who have been charged in the U.S. with criminal acts? Have any countries done so?

A. Our records do not show any cases where the U.S. has requested that a sending State prosecute its own diplomat charged with a criminal act in the U.S. The Department was given to understand that Manuel Ayree, son of an attache wth the Ghanaian Mission to the United Nations, would be prosecuted for rape following his return to Ghana in early 1981. However, the Ghanaian Government was overthrown in a coup later that year, and the matter was not pursued by the new government.

We know of no country that has prosecuted one of its diplomats for a crime allegedly committed in this country during the diplomat's assignment here.

Great Britain's Example and the Vienna Convention

8. Q. Which country would have jurisdiction over a crime committed in the United States by one diplomatic agent (of country A) against another diplomatic agent (of country B)?

A. The United States would have jurisdiction over a crime committed within its jurisdiction by a diplomatic agent of country A against a diplomatic agent of country B, provided that country A waived diplomatic immunity. Whether country A would have jurisdiction would depend on whether the domestic criminal laws of country A extended jurisdiction over its nationals, including diplomatic agents, for crimes committed abroad. Whether country B would have jurisdiction would depend on whether the domestic criminal laws of country B extended jurisdiction over persons who commit crimes against its nationals or diplomatic agents abroad. In this connection, it is worth noting that Article 3 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons obligates each State Party to take "such measures as may be necessary to establish its jurisdiction" over its nationals who are charged with the commission of certain crimes of violence against diplomatic agents.

United Nations

1. Q. Would you agree that the issue of diplomatic immunity is more serious in the United States because of the sizeable diplomatic presence of the United Nations delegations in New York? Isn't the problem also somewhat greater because of the World Bank here in Washington?

A. The presence in the United States of the United Nations and the Member Missions to the United Nations unquestionably adds to the numbers of persons in the United States who are entitled to full diplomatic immunity. However, other countries which host international organizations, such as Switzerland, also experience significantly greater numbers of diplomats than normal. It is not the case, however, that each of the UN Member Missions may be directly analogized to a foreign embassy in this respect. Only personnel constituting the Missions' leadership and the more substantive members of their staffs (normally significantly less than half of the Mission personnel) are accorded full diplomatic privileges and immunities pursuant to Section 15 of the UN Headquarters Agreement. The staff of the Missions who perform functions comparable to the administrative and technical staff of embassies are accorded "official acts" or "functional" immunity (i.e., immunity only for actions arising in connection with the performance of official duties or assigned functions) pursuant to the International Organization Immunities Act (22 U.S.C. 288). Thus the support staffs of Missions to the United Nations are accorded far less in the immunity area than are those of embassies, most of whose members are entitled to full criminal immunity. Moreover, family members of persons in these support staffs receive no immunity whatever. Except for the principal resident representatives (approximately 35 individuals) and their family members, who are accorded full diplomatic immunity pursuant to Section 15 of the UN Headquarters Agreement, the personnel of the World Bank and the International Monetary Fund in Washington, D.C., are not entitled to full diplomatic immunity pursuant to international law and are accorded only the more limited "functional" immunity provided for in the International Organization Immunities Act and the applicable treaties.

United Nations

2. Q. Is is reasonable to establish somewhat more restrictive standards for diplomatic immunity with respect to the U.N. and World Bank inasmuch as these do not involve bilateral relations with the U.S., but rather participation in international organizations? For instance, would the U.S. be on reasonable ground to expel diplomatic personnel assigned to the U.N. in instances where they have repeatedly violated traffic and shoplifting laws?

A. As indicated elsewhere, the applicable international and domestic legal regime already establishes a much more restrictive standard, which does not provide for full privileges and immunities for the support staff of Missions to the United Nations or for the personnel present in the United States in connection with the World Bank or the International Monetary Fund other than the few principal resident representatives. These categories of persons are accorded only "official acts" or "functional" immunity (i.e., immunity only for actions arising in connection with the performance of official duties or assigned functions) pursuant to the International Organization Immunities Act (and pursuant to treaty in the cases of the Bank and the Fund).

With respect to those who are entitled to full diplomatic privileges and immunities, it is considered to be important to administer their privileges and immunities in precisely the same manner as those afforded bilateral diplomatic personnel. The immunities of these UN diplomats are defined by reference to the immunities accorded bilateral diplomats and thus must be the same as a matter of international law. We could not interpret the same legal obligation differently in the multilateral context than we do in the bilateral context. This principle is followed by European countries which play host to international organizations.

On a practical level, while the UN Missions are not here to conduct bilateral relations, it is our experience that the member states will promptly threaten or take reciprocal steps contrary to the interests of our bilateral diplomatic mission in their territory when such States are confronted with real or imagined mistreatment of their UN diplomatic personnel.

The Department considers, therefore, that the correct manner of dealing with the privileges and immunities of UN diplomats is to enforce a more strict standard for dealing with serious or chronic criminal behavior by all diplomatic personnel, bilateral or multilateral. The Department has taken a number of steps to implement such a policy in recent years. In the case of repeated traffic violations, the normal procedure would be to suspend the driving privileges of the individual concerned but, in the case of an individual who defied this suspension, the Department would not hesitate to require departure. In addition, as in each case in which driving privileges are suspended, the Department requires the Ambassador to personally guarantee that the individual will not operate a motor vehicle again in this country, and failure to comply with the suspension would so seriously undermine the Ambassador's own credibility that his own continued usefulness in the U.S. would be in question. Similarly, minor shoplifting offenses would not normally be considered to warrant expulsion but repeated or aggravated activity of this type has prompted the Department to decide that expulsion is the proper remedy. This policy will continue.

Specific Incidents

1. Testimony was received regarding Ms. Margaret Curry who was struck by a car operated by representatives of the Afghanistan consulate to the United Nations on July 12, 1987. In light of Mr. Mlotek's testimony about automobile incidents, has the Afghan's driving license been revoked? Has the U.S. requested that diplomatic immunity be waived in order to permit prosecution of this case? If diplomatic immunity is not waived, will the U.S. act to expel the Afghan diplomat involved in the case?

A. The investigation of this case recently was closed by the New York Police due to insufficient evidence. The investigating authorities were unable to establish what in fact transpired in this incident, or who was driving the vehicle at the time in question. There had been great difficulty in obtaining the participation of Ms. Curry in the investigation, even though the U.S. Mission to the UN had been endeavoring to assist the Police to get Ms. Curry to examine a photo lineup in order to determine who was driving.

When Ms. Curry finally appeared to make an identification, she was shown numerous photos which included all male members of the Afghan UN Mission. She "positively" identified a photograph of a New York City detective as the driver of the vehicle.

This case underscores the need for prompt and complete cooperation by the so-called victims of diplomatic crime and thorough investigation by local law enforcement authorities.

Specific Incidents

2. Q. What was the disposition of the case, in February, 1987, in which the Ambassador from Papua New Guinea crashed into four parked cars, injuring one of the occupants of the vehicle? Was the diplomat declared "*non grata*" and expelled?

A. Former Ambassador Abisinito was removed by his government several days after the incident. The victim brought suit against the Ambassador's insurance company under the "direct action" provision of the Diplomatic Relations Act, 28 U.S.C. 1364. The Government of Papua New Guinea and the former Ambassador were later added as defendants. The Government of Papua New Guinea has indicated a willingness to compensate the victim, but has not yet done so.

Specific Incidents

3. Q. Shortly after the hearing, there was an automobile accident involving the son of the Senegalese ambassador. Is it correct that his license was revoked? What recourse does the State Department have if this young man, or others whose licenses have been revoked, subsequently drive without a license? What recourse does the State Department have if this young man, or others similarly involved, do not pay the traffic citations? Would he be expelled.

A. The driver's license of the son of the Senegalese Ambassador was revoked. When a license is revoked, the Ambassador is requested to guarantee that the individual will not operate a motor vehicle within the U.S. or any of its territories or possessions for the remainder of the individual's assignment (or presence as a family member) in the U.S. The Ambassador understands that should this be violated, the individual would be immediately expelled from the U.S. and the status of the Ambassador would be subject to scrutiny. Failure to pay traffic citations will cause the Department to review carefully a whole list of options, such as cancellation of the registration of the individual's vehicle, revocation of his/her operator's license along with the cancellation of the registration, or as an ultimate solution the expulsion of the offender from the U.S.

Specific Incidents

4. Q. In the shooting case of Kenneth Skeen, his assailant, the son of the Brazilian ambassador, eventually left the U.S. How long after the incident was his departure? Did he leave "voluntarily" or was he expelled? Will he ever be permitted to return to the U.S.? If so, will he be prosecuted for this shooting and an earlier crime he is alleged to have committed?

A. On November 29, 1982, the assailant was arrested, but refused to reveal his identity. On November 30 the Embassy informed the Department that he was missing, and that evening he provided his true name and identity and asserted diplomatic immunity in order to be released from jail. On December 2, the Department met with the Brazilian deputy chief of mission, and the departure of the accused followed the next day. This obviated the need for the Department to order his expulsion.

This person's name has been entered into the Department's worldwide computer system to alert all posts not to issue him a new visa without Department approval. Further, INS has entered him into its computer so that he may not reenter the country without appropriate review by U.S. authorities.

His immunity ~~as a dip~~lomat's family member ended on December 3, 1982, so he would no longer be immune from prosecution in the United States for the incident under discussion, but whether he would be prosecuted for this or any other possible offense, should he be apprehended in the United States, would be for the United States Attorney for the District of Columbia to decide.

The Committee should know that Brazil made an _ex gratia_ payment to Mr. Skeen, which he acknowledged in writing to be a fair settlement of his claim. In fact, his attorney stated in a letter to the Department that: "the . . . matter has been settled to Mr. Skeen's complete satisfaction. . . . . .Thank you for your kind assistance in bringing this matter to a close."

Specific Incidents

5. Q. You are familiar with the Alexandria rape case that was discussed and described as "Holly", are you not? Did the young men (a Saudi Arabian and an Egyptian) leave the country voluntarily or were they expelled? Do either have permission to return to the United States? In fact, did the Saudi Arabian return? Did the State Department subsequently act to expel him; if so, on what date? Why had action not been taken earlier; how long had he been in the U.S.? Is he now prohibited from reentering the U.S.? What procedures are undertaken to ensure that neither he nor other expelled individuals are permitted back in the U.S. under various visas?

Q. You are familiar with the Alexandria rape case that was discussed and described as "Holly", are you not? Did the young men (a Saudi Arabian and an Egyptian) leave the country voluntarily or were they expelled? Do either have permission to return to the United States?

A. At a meeting with the Saudi Ambassador on March 28, 1983, the Chief of Protocol stated that the alleged offender must leave the United States immediately and not return. The suspect left the United States within 24 hours. The Egyptian national, who had no entitlement to immunity, reportedly was sent home to Egypt by his father as soon as the latter learned of the incident.

There was a clear understanding between the Saudi Ambassador and the Chief of Protocol that the alleged offender would not return to the United States. Steps were taken to prevent his readmission. The Department has no information regarding the Egyptian national. However, if he were to return, and the victim were willing to press charges, he would be subject to prosecution.

Q. In fact, did the Saudi Arabian return? Did the State Department subsequently act to expel him; if so, on what date? Why had action not been taken earlier; how long had he been in the U.S.?

A. A senior Saudi Embassy official acknowledged in October 1983 that the suspect had returned to the Washington area at the time of the death of his father on June 6, 1983.

In late 1983/early 1984, the suspect was reportedly seen in Alexandria, Virginia. Immediately upon receiving this report, the Department contacted the Saudi Embassy, which assured the Department that based on its own investigation the suspect was not in the United States and that the sighting was a case of mistaken identity. The Embassy noted that the suspect and his brother have a strong physical resemblance and were often mistaken for one another.

Records of the Immigration and Naturalization Service indicate that a person with the same name as the suspect's, but with a different birth date, entered the United States at New York on August 20, 1985 with an F-1 (student) visa to study in California.

In early June 1987, the Department learned through media reports that the suspect was allegedly living in Alexandria, Virginia, with other members of his family, only a few doors from the victim and her parents. The Department immediately queried the Saudi Embassy which replied that the mother of the suspect confirmed that he had been here for a few days but had since departed. Soon thereafter, the Embassy informed the Department that the suspect was in Saudi Arabia and that he had been stripped of his travel document.

It should be noted that from the time of the suspect's expulsion from the United States on March 29, 1983, he was not entitled to any form of immunity.

Q. Is he now prohibited from reentering the U.S.?

A. Personal data concerning the suspect have been entered into the Department's worldwide Automated Visa Lookout System which is available at Foreign Service posts, so that a visa will not be issued without first consulting the Department. The same information has been made available to the Immigration and Naturalization Service so that immigration officers at ports of entry will seek an advisory opinion as to whether INS would allow his reentry into the U.S. Also, communications have been sent to the American Embassy in Saudi Arabia alerting it to the case in the event that the suspect applies for another visa. Moreover, the Department has impressed upon the Embassy of Saudi Arabia the seriousness with which it regards this matter and the total unacceptability of the suspect's return to this country.

Q. What procedures are undertaken to ensure that neither he nor other expelled individuals are permitted back in the U.S. under existing visas?

A. The same procedures apply as are described above, with the addition of cancelling whenever possible the visa and removing from the passport the INS form I-94. Further, the actual departure of the offender from the United States is monitored by State Department representatives.

Specific Incidents

6. Q. Mr. Arthur B. Knight, a pedestrian in Arlington, Virginia, was killed by a car driven by a Pakistani chauffeur. Cecelia McNeil, another pedestrian, was killed in New York by a car driven by the son of a North Yemen diplomat. In either of these cases, were the drivers expelled from the United States because of the severity of the automobile accidents?

A. The chauffeur in the case involving Mr. Knight was charged with reckless driving, which under Virginia law is a misdemeanor carrying a maximum penalty of $1,000 fine or twelve months imprisonment or both and loss of driving privileges for six months. As a member of the service staff of the embassy he did not have diplomatic immunity but did have official acts immunity under Article 37(3) of the Vienna Convention on Diplomatic Relations. The Department accordingly certified to the Office of the Commonwealth's Attorney for Arlington County that the chauffeur enjoyed immunity from prosecution only for acts performed in the course of his official duties. The Department further stated that whether acts are performed in the course of a person's official duties is a matter for judicial determination.

Following a hearing on the facts the court found that the accident had occurred while the chauffeur was performing his official duties, and the charges were thereupon dismissed. The chauffeur was not expelled. There is no record of his having had any additional driving accidents or citations. As the Committee is aware, the Department is now maintaining records of driving violations with a view to taking appropriate action to prevent abuses of our motor vehicle laws by individuals otherwise accorded immunity.

The case of Cecelia McNeil was a tragic accident which did not result from negligence on the part of the driver The accident occurred on November 25, 1981, and involved the son of the Permanent Representative to the UN of the Yemen Arab Republic. The accident occurred when Ms. McNeil stepped into the traffic, walking and running erratically against its flow. The driver swerved in an effort to avoid striking her but did not succeed. It was the Ambassador's son, the driver, who called the ambulance and he remained at the scene until it and the police arrived. Even after he had identified himself to the police and had been told that he was free to depart, the son voluntarily remained, cooperating fully with the police in the completion of their investigation. While the driver was exceeding the speed limit at the point of the accident, it was apparently considered that this factor did not lead to the occurrence of the accident (it appeared that he may have accelerated as he swerved in an effort to avoid Ms. McNeil). New York Police Department investigators determined that the incident was an accident and recommended that no criminal charges be brought. The driver was not expelled. It should be noted that this accident occurred in 1981, prior to the institution of the Department's current program for dealing more strictly with traffic offenses such as speeding.

Diplomatic Relations Act of 1978

Q. Am I correct in understanding that one of the purposes of the Diplomatic Relations Act of 1978 was to reduce the number of foreign diplomats subject to immunity? How many diplomats were eligible for immunity prior to 1978 and how many are eligible today?

A. The 1961 Vienna Convention on Diplomatic Relations entered into force for the United States on December 13, 1972. However, in a May 4, 1973 letter to the Department of State, the Department of Justice stated its view that ratification of the Convention had not acted to repeal existing Federal law (22 U.S.C. 252-254) which extended privileges and immunities to certain diplomatic persons, since there was no direct conflict between the two, though there were differences in the scope of the immunities each conferred.

Under the legislation, which was taken from a British statute of 1708 and enacted in 1790, recognized personnel of foreign diplomatic missions in the United States and even domestic servants of diplomats were immune from both criminal and civil process. The Vienna Convention, on the other hand, divided members of a diplomatic mission into different categories: diplomatic agents, administrative and technical staff, and service staff. Private servants were placed in a separate category. Each of these categories of persons was entitled to a different degree of privileges and immunities.

Both the statute and the treaty were for an unknown period to be the supreme law of the land. Therefore the Department of Justice concluded in its 1973 opinion that, in any case where the two related to the same subject, an endeavor should be made to give effect to both if by any reasonable interpretation that could be done. Where that could not be done, Justice concluded that, in general, "it would be lawful to accord the broader privileges and immunities provided for in the statute rather than those in the Convention."

One of the stated tenets guiding the framers of the Convention was the realization "that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States." This purpose would continue to be thwarted in several ways, however, as long as the 1790 statute retained partial validity. For example, ambassadors and other diplomats, who could not be sued because of 22 U.S.C. 252, would be subject to suit in several types of cases if the Vienna Convention was solely in effect. Members of the administrative and technical staff still would enjoy immunity from civil and administrative jurisdiction; under the Convention alone they would be able to assert a claim to such immunity only with respect to acts performed within the scope of their official duties. Members of the service staff and private servants of diplomatic mission staff would retain full criminal and civil immunity until repeal of the ancient statute, after which the former would have only official acts immunity and the latter none at all.

The Diplomatic Relations Act of 1978 had as its principal objective establishment of the Vienna Convention as the unequivocal statement of United States law governing privileges and immunities in its field. It was not one of the Act's purposes to achieve a reduction in the number of foreign diplomats entitled to immunity; rather, its intent was to bring the United States into line with the rest of the nations party to the Convention and to enable our Government to make immunity eligibility determinations on the more rational basis which the Convention provides and which is universally understood and accepted.

The following table reflects the numbers of persons in the several categories who were covered by full diplomatic immunity (i.e., from criminal, civil, and administrative jurisdiction) until adoption of the Diplomatic Relations Act of 1978, and the number of persons in each category who since enactment of the legislation have retained that degree of immunity (modified by three narrow excepted classes of civil actions):

Entitlement to full Diplomatic Immunity
(i.e., Criminal and Civil)

	1978	1987
Diplomats	3,915	4,825 *
Family Members	9,734	10,728 **
Administrative and Technical Staff	2,877	-o-
Service Staff	273	-o-
Domestic Servants	606	-o-

* Includes 167 Soviet Embassy and Peoples Republic of China Embassy employees per Bilateral Agreements.

** Includes 219 family members of Soviet and PRC employees with full immunity under Bilateral Agreements.

Diplomatic Pouch

1. Q. Several witnesses suggested that there had been occasions in which the "diplomatic pouch" had been used to bring weapons into the U.S. Is the U.S. Government aware of instances in which this has been done? If so, please explain.

We are aware of assertions that the diplomatic pouch has been used to bring weapons into this country. Should the Committee wish to go into the subject in detail, we would be pleased to meet with it in closed session, possibly with representatives of other concerned agencies, for that purpose.

2. Q. Is the U.S. government aware of instances in which the diplomatic pouch been used to bring into the U.S. illicit drugs? If so, please explain.

A. We are aware of assertions that the diplomatic pouch has been used to bring illicit drugs into this country. Should the Committee wish to go into the subject in detail, we would be pleased to meet with it in closed session, possibly with representatives of other concerned agencies, for that purpose.

3. Q. Am I correct in assuming that the U.S. does not use its diplomatic pouch for similar activities?

A. To the best of our knowledge, yes.

4. Q. Should the U.S. establish some form of scanning--electronic or otherwise--of incoming diplomatic pouches to ensure that the pouches are not used for weapons or drugs? I would appreciate receiving not only the view of the State Department on this question, but also the Federal Bureau of Investigation, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, and Firearms, and other appropriate agencies with jurisdiction over narcotics and firearms within the U.S.

A. Article 27 of the Vienna Convention on Diplomatic Relations provides that the diplomatic pouch shall not be opened or detained. As the largest sender of diplomatic pouches, the United States traditionally has been of the opinion that the inviolability of the pouch must be maintained, and previously has resisted changes in the current regime. The diplomatic pouch is utilized to send classified and sensitive documents and articles, including communications and ciphering equipment, which is vital to the operations of our missions abroad and the accomplishment of our foreign policy and national security objectives. Any provision which would allow scanning of the bag risks compromising the confidentiality of sensitive communications equipment and other contents of the bag.

As the largest receiver of pouches, the United States is also concerned with any abuse of the pouch. In recent years there have been proposals to change the existing regime regarding the pouch to permit under a variety of circumstances the examination of the pouch by x-ray or other means. For example, the International Law Commission (ILC) is considering possible changes. While many of these proposals address illegal importation of weapons used to support terrorism or illicit drugs, all of these proposals raise serious questions concerning integrity of the pouch, which is of vital concern to the United States as sender of the pouch. The Department of State, along with other concerned agencies, is reviewing the ILC and other proposals. Should the Committee wish to go into the subject in detail, we would be pleased to meet with it in closed session, possibly with representatives of other concerned agencies, for that purpose.

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